

■ §2.20 PAROLING POLICY GUIDELINES; STATEMENT OF GENERAL POLICY.

- (a) To establish a national paroling policy, promote a more consistent exercise of discretion, and enable fairer and more equitable decision-making without removing individual case consideration, the U.S. Parole Commission has adopted guidelines for parole release consideration.**
- (b) These guidelines indicate the customary range of time to be served before release for various combinations of offense (severity) and offender (parole prognosis) characteristics. The time ranges specified by the guidelines are established specifically for cases with good institutional adjustment and program progress.**
- (c) These time ranges are merely guidelines. Where the circumstances warrant, decisions outside of the guidelines (either above or below) may be rendered.**
- (d) The guidelines contain instructions for the rating of certain offense behaviors. However, especially mitigating or aggravating circumstances in a particular case may justify a decision or a severity rating different from that listed.**
- (e) An evaluation sheet containing a "salient factor score" serves as an aid in determining the parole prognosis (potential risk of parole violation). However, where circumstances warrant, clinical evaluation of risk may override this predictive aid.**
- (f) Guidelines for reparole consideration are set forth at §2.21.**
- (g) The Commission shall review the guidelines, including the salient factor score, periodically and may revise or modify them at any time as deemed appropriate.**
- (h) If an offender was less than 18 years of age at the time of the current offense, such youthfulness shall, in itself, be considered as a mitigating factor.**
- (i) For criminal behavior committed while in confinement see §2.36 (Rescission Guidelines).**
- (j)(1) In probation revocation cases, the original federal offense behavior and any new criminal conduct on probation (federal or otherwise) is considered in assessing offense severity. The original federal conviction is also counted in the salient factor score as a prior conviction. Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity.**

(2) Exception: Where probation has been revoked on a complex sentence [i.e., a committed sentence of more than six months on one count or more of an indictment or information followed by a probation term on the other count(s) of an indictment or information], the case shall be considered for guideline purposes under §2.21 as if parole rather than probation had been revoked.

GUIDELINES FOR DECISION-MAKING
[Guidelines for Decision-Making, Customary Total Time
to be Served before Release (including jail time)]

| OFFENSE CHARACTERISTICS: | OFFENDER CHARACTERISTICS: Parole Prognosis (Salient Factor Score 1998) | | | |
|---|---|---|--------------------------|---------------------------|
| | Very Good (10-8) | Good (7-6) | Fair (5-4) | Poor (3-0) |
| Severity of Offense Behavior | | | | |
| Category One | <=4 months | Guideline Range <=8 months | 8-12 months | 12-16 months |
| Category Two | <=6 months | Guideline Range <=10 months | 12-16 months | 16-22 months |
| Category Three | <=10 months | Guideline Range 12-16 months | 18-24 months | 24-32 months |
| Category Four | 12-18 months | Guideline Range 20-26 months | 26-34 months | 34-44 months |
| Category Five | 24-36 months | Guideline Range 36-48 months | 48-60 months | 60-72 months |
| Category Six | 40-52 months | Guideline Range 52-64 months | 64-78 months | 78-100 months |
| Category Seven | 52-80 months | Guideline Range 64-92 months | 78-110 months | 100-148 months |
| Category Eight* | 100+ months | Guideline Range 120+ months | 150+ months | 180+ months |

***Note: For Category Eight, no upper limits are specified due to the extreme variability of the cases within this category. For decisions exceeding the lower limit of the applicable guideline category BY MORE THAN 48 MONTHS, the Commission will specify the pertinent case factors upon which it relied in reaching its decision, which may include the absence of any factors mitigating the offense. This procedure is intended to ensure that the prisoner understands that**

individualized consideration has been given to the facts of the case, and not to suggest that a grant of parole is to be presumed for any class of Category Eight offenders. However, a murder committed to silence a victim or witness, a contract murder, a murder by torture, the murder of a law enforcement officer to carry out an offense, or a murder carried out to further the aims of an on-going criminal operation, shall not justify a parole at any point in the prisoner's sentence unless there are compelling circumstances in mitigation (e.g., a youthful offender who participated in a murder planned and executed by his parent). Such aggravated crimes are considered, by definition, at the extreme high end of Category Eight offenses. For these cases, the expiration of the sentence is deemed to be a decision at the maximum limit of the guideline range. (The fact that an offense does not fall under the definition contained in this rule does not mean that the Commission is obliged to grant a parole.)

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CHAPTER ONE - OFFENSES OF GENERAL APPLICABILITY

- 101 Conspiracy
Grade conspiracy in the same category as the underlying offense.
- 102 Attempt
Grade attempt in the same category as the offense attempted.
- 103 Aiding and Abetting
Grade aiding and abetting in the same category as the underlying offense. *[[Notes and Procedures. Aiding and Abetting is sometimes referred to as Accessory Before the Fact]].*
- 104 Accessory After the Fact*
Grade accessory after the fact as two categories below the underlying offense, but not less than Category One.
- 105 Solicitation to Commit a Crime of Violence
Grade solicitation to commit a crime of violence in the same category as the underlying offense if the crime solicited would be graded as Category Eight. In all other cases, grade solicitation to commit a crime of violence one category below the underlying offense, but not less than Category One.

--- NOTE TO CHAPTER ONE

The reasons for a conspiracy or attempt not being completed may, where the circumstances warrant, be considered as a mitigating factor (e.g., where there is voluntary withdrawal by the offender prior to completion of the offense). *[[Notes and Procedures. In grading unconsummated conspiracy offenses, care must be taken to distinguish the specific and imminent elements of the offense (which are to be considered) from those which are*

*Terms marked by an asterisk are defined in Chapter Thirteen.

speculative and remote.]]

CHAPTER TWO - OFFENSES INVOLVING THE PERSON

SUBCHAPTER A - HOMICIDE OFFENSES

201 Murder

Murder*, or a forcible felony* resulting in the death of a person other than a participating offender, shall be graded as Category Eight. *[[Notes and Procedures. (1) Grade a forcible felony resulting in the death of a person other than a participating offender as Category Eight even if the death was not intentional. Example 201-1: During a robbery, an offender's weapon discharges accidentally, resulting in the death of a bank teller. (2) Grade conduct as "attempted murder" only where it is established from the circumstances that both (a) death was the intended object; and (b) had death resulted, the offense would have been graded as Category Eight. Example 201-2: An offender places a bomb aboard an aircraft, but the bomb fails to explode. Example 201-3: During a robbery, an offender places a loaded revolver to the head of a victim and pulls the trigger, but the weapon misfires. Grade each of the above examples as "attempted murder." (3) An attempt to kill which, if successful, would have been classified as "voluntary manslaughter" (Category Seven), is to be graded as "assault with serious bodily injury the result intended".]]*

202 Voluntary Manslaughter* Category Seven.

[[Notes and Procedures. Example 202-1: An offender stabs and kills a person during a drunken quarrel in a tavern.]]

203 Involuntary Manslaughter* Category Four.

[[Notes and Procedures. This offense is frequently referred to as "grossly negligent or reckless homicide." Example 203-1: While driving under the influence of alcohol, an offender loses control of a vehicle and kills a pedestrian.]]

SUBCHAPTER B - ASSAULT OFFENSES

211 Assault During Commission of Another Offense

- (a) **If serious bodily injury* results or if "serious bodily injury is the result intended"*, grade as Category Seven;** *[[Notes and Procedures. Example 211(a)-1: An offender, while fleeing from a robbery, fires a weapon from a distance at a pursuing police officer. The firing of the weapon at the officer in this circumstance is sufficient to find that "serious bodily injury" was the result intended.]]*
- (b) **If bodily injury* results, or a weapon is fired by any offender, grade as Category Six;** *[[Notes and Procedures. Example 211(b)-1: During a residential burglary, an offender is confronted by the victim; the offender strikes the victim with his fist and breaks the victim's jaw. Example 211(b)-2: During a bank robbery, an offender fires a weapon at the ceiling to intimidate the victims. No one is injured.]]*
- (c) **Otherwise, grade as Category Five.** *[[Notes and Procedures. Example 211(c)-1: An offender forcibly escapes by assaulting a correctional officer. Note: If bodily injury to the correctional officer results, or if a dangerous weapon is used to accomplish the assault, grade as Offense 212(d). Example 211(c)-2: An offender assaults a victim while attempting to commit a sexual act (other than forcible rape or sodomy).]]*
- [[For the purposes of this guideline, "another offense" means a forcible felony.* An assault during the commission of a misdemeanor offense or non-forcible felony is graded as Offense 212 (Assault).]]*

212 Assault

- (a) **If serious bodily injury* results or if "serious bodily injury is the result intended"*, grade as Category Seven;** *[[Notes and Procedures. Example 212(a)-1: During an argument, an offender strikes the victim over the head with a bottle causing injuries sufficient to place the victim on the "critical" list. Example 212(a)-2: An offender throws a vial of acid at the face of a victim.]]*
- (b) **If bodily injury* results or a dangerous weapon is used by any offender, grade as Category Five;**
- (c) **Otherwise, grade as Category Two.**

*Terms marked by an asterisk are defined in Chapter Thirteen.

(d) Exception:

(1) If the victim was known to be a "protected person"* or law enforcement, judicial, or correctional official, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three. [[Notes and Procedures. Grade an assault on a criminal justice official during an arrest under this section only if it involves force sufficient to create a likelihood of bodily injury (e.g., striking or kicking the officer).]]

(2) If an assault is committed while resisting an arrest or detention initiated by a law enforcement officer or civilian acting under color of law, grade conduct under (a) as Category Seven, (b) as Category Six, and (c) as Category Three.

[[Notes and Procedures. The phrase "a dangerous weapon is used" refers to conduct in which an offender's use of a dangerous weapon puts the victim in imminent danger of bodily injury (e.g., an offender strikes at a victim with an iron bar) or threatens the victim with death or serious bodily injury (e.g., an offender points a firearm at the victim's head). Conduct that does not fit the above parameters (e.g., an offender displays a baseball bat during a domestic dispute but does not attempt to strike the victim with the bat) is graded as Offense 212(c).]]

213 Firing a Weapon at a Structure Where Occupant(s) are Physically Present

Grade according to the underlying offense if one can be established, but not less than Category Five.

SUBCHAPTER C - KIDNAPING AND RELATED OFFENSES

221 Kidnaping

(a) If the purpose of the kidnaping is for ransom or terrorism, grade as Category Eight.

(b) If a person is held hostage in a known place for purposes of extortion (e.g., forcing a bank manager to drive to a bank to retrieve money by holding a family member hostage at home), grade as Category Seven;

(c) If a victim is used as a shield or hostage in a confrontation with law enforcement authorities, grade as Category Seven;

(d) Otherwise, grade as Category Seven.

(e) Exception: If not for ransom or terrorism, and no bodily injury to victim, and limited duration (e.g., abducting the driver of a truck during a hijacking and releasing him unharmed within an hour), grade as Category Six.

222 Demand for Ransom

(a) If a kidnaping has, in fact, occurred, but it is established that the offender was not acting in concert with the kidnapper(s), grade as Category Seven;

(b) If no kidnaping has occurred, grade as "extortion".

SUBCHAPTER D - SEXUAL OFFENSES

231 Rape or Forcible Sodomy

(a) Category Seven.

(b) Exception: If a prior consensual sexual relationship is present between victim and offender, grade as Category Six.

232 Carnal Knowledge* or Sodomy Involving Minors

(a) Grade as Category Four, except as provided below.

(b) If the relationship is clearly consensual and the victim is at least fourteen years old, and the age difference between the victim and offender is less than four years, grade as Category One.

(c) If the victim is less than twelve years old, grade as Category Seven.

(d) If the offender is an adult who has abused a position of trust (e.g., teacher, counselor, or physician), or the offense involved multiple instances of predatory sexual behavior, grade as Category Seven. Sexual behavior is deemed predatory when the offender repeatedly uses any trick or other device to attract, lure, or bribe victims into the initial contact that results in the offense.

233 Other Unlawful Sexual Conduct With Minors

(a) Category Four.

*Terms marked by an asterisk are defined in Chapter Thirteen.

- (b) **Exception:** If the victim is less than twelve years old grade as Category Six.

SUBCHAPTER E - OFFENSES INVOLVING AIRCRAFT

241 Aircraft Piracy
Category Eight.

242 Interference with a Flight Crew

- (a) If the conduct or attempted conduct has potential for creating a significant safety risk to an aircraft or passengers, grade as Category Seven;
(b) Otherwise, grade as Category Two.

SUBCHAPTER F - COMMUNICATION OF THREATS

251 Communicating a Threat [to kill, assault, or kidnap]

- (a) **Category Four;** *[[Notes and Procedures. (1) Communicating a threat includes any threat (written or oral) against the President and successors to the presidency (18 U.S.C. 871); any threat sent through the mail (18 U.S.C. 876); and any threat transmitted in interstate commerce (18 U.S.C. 875). Interstate commerce includes all telephone communications. (2) Separate threats to different victims are treated as multiple separate offenses.]]*

(b) **Notes:**

- (1) Any overt act committed for the purposes of carrying out a threat in this subchapter may be considered as an aggravating factor.
(2) If for purposes of extortion or obstruction of justice, grade according to Chapter Three, Subchapter C, or Chapter Six, Subchapter B, as applicable.

[[Notes and Procedures: This guideline applies only to threats that constitute felonious conduct. Misdemeanor threats (not amounting to an assault) are graded as Category One offenses under Chapter 12.]]

CHAPTER THREE - OFFENSES INVOLVING PROPERTY

SUBCHAPTER A - ARSON AND OTHER PROPERTY DESTRUCTION OFFENSES

301 Property Destruction by Fire or Explosives

- (a) If the conduct results in serious bodily injury* or if "serious bodily injury is the result intended"*, grade as Category Seven;
(b) If the conduct (i) involves any place where persons are present or likely to be present; or (ii) involves a residence, building, or other structure; or (iii) results in bodily injury*, grade as Category Six;
(c) Otherwise, grade as "property destruction other than listed above" but not less than Category Five.

[[Notes and Procedures. (1) The term "structure" is not subject to precise definition, but comparability in size to a building may be used for guidance. Thus, an automobile, a small boat, or a small detached shed would not be considered a structure. On the other hand, a ship or an oil storage complex would be considered a structure under this provision. (2) Reminder: Grade multiple separate arsons under the multiple separate offense procedure.]]

302 Wrecking a Train
Category Seven.

303 Property Destruction Other Than Listed Above

- (a) If the conduct results in bodily injury* or serious bodily injury*, or if "serious bodily injury is the result intended"*, grade as if "assault during commission of another offense";
(b) If damage of more than \$5,000,000 is caused, grade as Category Seven;
(c) If damage of more than \$1,000,000 but not more than \$5,000,000 is caused, grade as Category Six;
(d) If damage of more than \$200,000 but not more than \$1,000,000 is caused, grade as Category Five;
(e) If damage of at least \$40,000 but not more than \$200,000 is caused, grade as Category Four;
(f) If damage of at least \$2,000 but less than \$40,000 is caused, grade as Category Three;
(g) If damage of less than \$2,000 is caused, grade as Category One.

*Terms marked by an asterisk are defined in Chapter Thirteen.

- (h) **Exception:** If a significant interruption of a government or public utility function is caused, grade as not less than Category Three.

SUBCHAPTER B - CRIMINAL ENTRY OFFENSES

311 Burglary or Unlawful Entry

- (a) If the conduct involves an armory or similar facility (e.g., a facility where automatic weapons or war materials are stored) for the purpose of theft or destruction of weapons or war materials, grade as Category Six;
- (b) If the conduct involves an inhabited dwelling (whether or not a victim is present), or any premises with a hostile confrontation with a victim, grade as Category Five;
- (c) If the conduct involves use of explosives or safecracking, grade as Category Five; *[[Notes and Procedures. The term "safecracking" is intended to include conduct that is appropriately termed "skilled" or "sophisticated" (e.g., "drilling" a safe on the premises or using an instrument to detect the combination of the safe).]]*
- (d) Otherwise, grade as "theft" offense, but not less than Category Two.
- (e) **Exception:** If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense. *[[Notes and Procedures. The term "burglary/unlawful entry" refers to conduct involving a structure or other enclosed premises. Breaking and entering/ unlawful entry of an automobile is graded as a theft offense (Offense 331).]]*

SUBCHAPTER C - ROBBERY, EXTORTION, AND BLACK MAIL

321 Robbery

- (a) Category Five.
- (b) **Exceptions:**
 - (1) If the grade of the applicable "theft" offense exceeds the grade for robbery, grade as a "theft" offense.
 - (2) If any offender forces a victim to accompany any offender to a different location, or if a victim is forcibly detained by being tied, bound, or locked up, grade as Category Six. *[[Notes and Procedures. The term "different location" refers to removal from the premises (e.g., forcing a victim of a bank robbery to accompany an offender outside the bank).]]*
 - (3) Pickpocketing (stealth-no force or fear), see Subchapter D.
- (c) **Note:** Grade purse snatching (fear or force) as robbery.

322 Extortion

- (a) If by threat of physical injury to person or property, or extortionate extension of credit* (loansharking), grade as Category Five;
- (b) If by use of official governmental position, grade according to Chapter Six, Subchapter C;
- (c) If neither (a) nor (b) is applicable, grade under Chapter Eleven, Subchapter F;
- (d) **Exceptions:**
 - (1) If the grade of the applicable "theft" offense exceeds the grade under this subchapter, grade as a "theft" offense;
 - (2) If a victim is physically held hostage for purposes of extortion, grade according to Chapter Two, Subchapter C.

323 Blackmail [threat to injure reputation or accuse of crime]

Grade as a "theft" offense according to the value of the property demanded, but not less than Category Three. Actual damage to reputation may be considered as an aggravating factor.

SUBCHAPTER D - THEFT AND RELATED OFFENSES

331 Theft, Forgery, Fraud, Trafficking in Stolen Property*, Interstate Transportation of Stolen Property, Receiving Stolen Property, Embezzlement, and Related Offenses

- (a) If the value of the property* is more than \$5,000,000, grade as Category Seven;
- (b) If the value of the property* is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;
- (c) If the value of the property* is more than \$200,000 but not more than \$1,000,000, grade as Category Five;

*Terms marked by an asterisk are defined in Chapter Thirteen.

- (d) If the value of the property* is at least \$40,000 but not more than \$200,000, grade as Category Four;
- (e) If the value of the property* is at least \$2,000 but less than \$40,000, grade as Category Three;
- (f) If the value of the property* is less than \$2,000, grade as Category One.
- (g) **Exceptions:**
 - (1) Offenses involving stolen checks, credit cards, money orders or mail, forgery, fraud, interstate transportation of stolen or forged securities, trafficking in stolen property*, or embezzlement shall be graded as not less than Category Two;
 - (2) Theft of an automobile shall be graded as no less than Category Three. Note: where the vehicle was recovered within 72 hours with no significant damage and the circumstances indicate that the only purpose of the theft was temporary use (e.g., joyriding), such circumstances may be considered as a mitigating factor; *[[Notes and Procedures. Theft of truck incidental to theft of cargo. When the theft of the truck is clearly incidental to the theft of the cargo (e.g., the truck is recovered abandoned within 72 hours without significant damage) the value of the truck shall be added to the value of the cargo but such circumstances may be considered as a mitigating factor.]]*
 - (3) Grade obtaining drugs for own use by a fraudulent or fraudulently obtained prescription as Category Two.
 - (4) Grade manufacture, sale, and fraudulent use of credit cards as follows:
 - (i) Grade the manufacture, distribution or possession of counterfeit or altered credit cards as not less than Category Four.
 - (ii) Grade the distribution or possession of multiple stolen credit cards as not less than Category Three.
 - (iii) Grade the distribution or possession of a single stolen credit card as not less than Category Two.
- (h) **Notes:**
 - (1) In "theft" offenses, the total amount of the theft committed or attempted by the offender, or others acting in concert with the offender, is to be used. *[[Notes and Procedures. Example 331(h)-1: Seven persons in concert commit a theft of \$70,000; each receives \$10,000. Grade according to the total amount (\$70,000). Example 331(h)-2: An offender fraudulently sells stock worth \$20,000 for \$90,000. Grade according to the loss (\$70,000).]]*
 - (2) Grade fraudulent sale of drugs (e.g., sale of sugar as heroin) as "fraud".

332 Pickpocketing [stealth-no force or fear]
Grade as a "theft" offense, but not less than Category Three.

333 Fraudulent Loan Applications
Grade as a "fraud" offense according to the amount of the loan. *[[Notes and Procedures. Example 333-1: An offender falsifies collateral of \$250,000 to obtain a \$50,000 loan. Grade according to the value of the loan (\$50,000).]]*

334 Preparation or Possession of Fraudulent Documents
(a) If for purposes of committing another offense, grade according to the offense intended;
(b) Otherwise, grade as Category Two.

335 Criminal Copyright Offenses
(a) If very large scale (e.g., more than 100,000 sound recordings or more than 10,000 audio visual works), grade as Category Five;
(b) If large scale (e.g., 20,000-100,000 sound recordings or 2,000-10,000 audio visual works), grade as Category Four;
(c) If medium scale (e.g., 2,000-19,999 sound recordings or 200-1,999 audio visual works), grade as Category Three;
(d) If small scale (e.g., less than 2,000 sound recordings or less than 200 audio visual works), grade as Category Two.

SUBCHAPTER E - COUNTERFEITING AND RELATED OFFENSES

341 Passing or Possession of Counterfeit Currency or Other Medium of Exchange*
(a) If the face value of the currency or other medium of exchange is more than \$5,000,000, grade as Category Seven;

*Terms marked by an asterisk are defined in Chapter Thirteen.

- (b) If the face value of the currency or other medium of exchange is more than \$1,000,000 but less than \$5,000,000, grade as Category Six;
- (c) If the face value of the currency or other medium of exchange is more than \$200,000 but not more than \$1,000,000, grade as Category Five;
- (d) If the face value of the currency or other medium of exchange is at least \$40,000 but not more than \$200,000, grade as Category Four;
- (e) If the face value of the currency or other medium of exchange is at least \$2,000 but less than \$40,000, grade as Category Three;
- (f) If the face value of the currency or other medium of exchange is less than \$2,000, grade as Category Two.

342 Manufacture of Counterfeit Currency or Other Medium of Exchange* or Possession of Instruments for Manufacture

Grade manufacture or possession of instruments for manufacture (e.g., a printing press or plates) according to the quantity printed (see passing or possession), but not less than Category Five. The term "manufacture" refers to the capacity to print or generate multiple copies; it does not apply to pasting together parts of different notes. [[*Notes and Procedures*. The term "manufacturing" does not include the copying of currency not intended to pass visual inspection (e.g., reproducing a dollar bill on a copying machine for insertion in a bill/coin changing machine).]]

SUBCHAPTER F - BANKRUPTCY OFFENSES

351 Fraud in Bankruptcy or Concealing Property

Grade as a "fraud" offense.

SUBCHAPTER G - VIOLATION OF SECURITIES OR INVESTMENT REGULATIONS AND ANTITRUST OFFENSES

361 Violation of Securities or Investment Regulations

- (a) If for purposes of fraud, grade according to the underlying offense;
- (b) Otherwise, grade as Category Two. [[*Notes and Procedures*. If "insider trading", grade as Offense 363.]]

362 Antitrust Offenses

- (a) If estimated economic impact is more than one million dollars, grade as Category Four;
- (b) If the estimated economic impact is more than \$100,000 but not more than one million dollars, grade as Category Three;
- (c) Otherwise, grade as Category Two.
- (d) Note: The term "economic impact" refers to the estimated loss to any victims (e.g., loss to consumers from a price fixing offense).

363 Insider Trading

- (a) If the estimated economic impact is more than \$5,000,000, grade as Category Seven;
- (b) If the estimated economic impact is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;
- (c) If the estimated economic impact is at least \$200,000 but not more than \$1,000,000, grade as Category Five;
- (d) If the estimated economic impact is at least \$40,000 but less than \$200,000, grade as Category Four;
- (e) If the estimated economic impact is at least \$2,000, but less than \$40,000, grade as Category Three;
- (f) If the estimated economic impact is less than \$2,000, grade as Category Two.
- (g) Note: The term "economic impact" includes the damage sustained by the victim whose information was unlawfully used, plus any other illicit profit resulting from the offense.

**CHAPTER FOUR - OFFENSES INVOLVING IMMIGRATION,
NATURALIZATION, AND PASSPORTS**

401 Unlawfully Entering the United States as an Alien

Category One.

*Terms marked by an asterisk are defined in Chapter Thirteen.

402 Transportation of Unlawful Alien(s)

- (a) If the transportation of unlawful alien(s) involves detention and demand for payment, grade as Category Five;
- (b) Otherwise, grade as Category Three.

403 Offenses Involving Passports

- (a) If making an unlawful passport for distribution to another, possession with intent to distribute, or distribution of an unlawful passport, grade as Category Three;
- (b) If fraudulently acquiring or improperly using a passport, grade as Category Two.

404 Offenses Involving Naturalization or Citizenship Papers

- (a) If forging or falsifying naturalization or citizenship papers for distribution to another, possession with intent to distribute, or distribution, grade as Category Three;
- (b) If acquiring fraudulent naturalization or citizenship papers for own use or improper use of such papers, grade as Category Two;
- (c) If failure to surrender canceled naturalization or citizenship certificate(s), grade as Category One.

CHAPTER FIVE - OFFENSES INVOLVING REVENUE

SUBCHAPTER A - INTERNAL REVENUE OFFENSES

501 Tax Evasion [income tax or other taxes]

- (a) If the amount of tax evaded or evasion attempted is more than \$5,000,000, grade as Category Seven;
- (b) If the amount of tax evaded or evasion attempted is more than \$1,000,000 but not more than \$5,000,000, grade as Category Six;
- (c) If the amount of tax evaded or evasion attempted is at least \$200,000 but not more than \$1,000,000, grade as Category Five;
- (d) If the amount of tax evaded or evasion attempted is at least \$40,000 but not more than \$200,000, grade as Category Four;
- (e) If the amount of tax evaded or evasion attempted is at least \$2,000 but less than \$40,000, grade as Category Three.
- (f) If the amount of tax evaded or evasion attempted is less than \$2,000, grade as Category One.
- (g) **Notes:**
 - (1) Grade according to the amount of tax evaded or evasion attempted, not the gross amount of income. [[Notes and Procedures. Example 501(g)(1)-1: An offender fails to report income of \$30,000, thus avoiding \$10,000 in taxes; the severity rating is determined by the tax avoided (i.e., \$10,000). This amount does not include interest or penalties.]]
 - (2) Tax evasion refers to failure to pay applicable taxes. Grade a false claim for a tax refund (where tax has not been withheld) as a "fraud" offense.

502 Operation of an Unregistered Still

Grade as a "tax evasion" offense.

SUBCHAPTER B - CUSTOMS OFFENSES

511 Smuggling Goods into the United States

- (a) If the conduct is for the purpose of tax evasion, grade as a "tax evasion" offense.
- (b) If the article is prohibited from entry to the country absolutely (e.g., illicit drugs or weapons), use the grading applicable to possession with intent to distribute of such articles, or the grading applicable to tax evasion, whichever is higher, but not less than Category Two;
- (c) If the conduct involves breaking seals, or altering or defacing customs marks, or concealing invoices, grade according to (a) or (b), as applicable, but not less than Category Two.

512 Smuggling Goods into Foreign Countries in Violation of Foreign Law (re: 18 U.S.C. 546)
Category Two.

*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER C - CONTRABAND CIGARETTES

521 Trafficking in Contraband Cigarettes (re: 18 U.S.C. 2342)

Grade as a tax evasion offense.

CHAPTER SIX - OFFENSES INVOLVING GOVERNMENTAL PROCESS

SUBCHAPTER A - IMPERSONATION OF OFFICIALS

601 Impersonation of Official

- (a) If for purposes of commission of another offense, grade according to the offense attempted, but not less than Category Two;
- (b) Otherwise, grade as Category Two.

SUBCHAPTER B - OBSTRUCTING JUSTICE

611 Perjury

- (a) If the perjured testimony concerns a criminal offense, grade as "accessory after the fact", but not less than Category Three;
- (b) Otherwise, grade as Category Three.
- (c) Suborning perjury, grade as perjury.

612 Unlawful False Statements Not Under Oath

Category One.

613 Tampering With Evidence or Witness, Victim, Informant, or Juror

- (a) If concerning a criminal offense, grade as "accessory after the fact", but not less than Category Three;
- (b) Otherwise, grade as Category Three.
- (c) Exception: Intimidation by threat of physical harm, grade as not less than Category Five.

614 Misprision of a Felony*

Grade as if "accessory after the fact" but not higher than Category Three.

615 Harboring a Fugitive

Grade as if "accessory after the fact" to the offense for which the fugitive is wanted, but not higher than Category Three. *[[Notes and Procedures. In the case of a fugitive who is an escapee, the "offense for which the fugitive is wanted" is considered to be the escape or the offense for which the fugitive was being held, whichever is graded higher.]]*

616 Escape

If in connection with another offense for which a severity rating can be assessed, grade the underlying offense and apply the rescission guidelines to determine an additional penalty. Otherwise, grade as Category Three. *[[Notes and Procedures. If the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense), grade as Category Three, unless Offense 211(c) or 212(d) is applicable.]]*

617 Failure to Appear*

- (a) **In Felony Proceedings.** If in connection with an offense for which a severity rating can be assessed, add to the guidelines otherwise appropriate the following: (i) ≤ 6 months if voluntary return within 6 days, or (ii) 6-12 months in any other case. Otherwise, grade as Category Three. *[[Notes and Procedures. Grade as Category Three only if the underlying offense behavior cannot be established in accord with Commission regulations (e.g., where the information is insufficient to establish that the offender committed the underlying offense).]]*
- (b) **In Misdemeanor Proceedings.** Grade as Category One. *[[Notes and Procedures. In the case of a failure to appear on a misdemeanor charge, grade the failure to appear and the underlying charge (if it can be established under Commission regulations) as multiple separate offenses. Example 617(b)-1: A parolee fails to appear on a*

*Terms marked by an asterisk are defined in Chapter Thirteen.

misdemeanor charge involving theft of \$400. Since the proceeding is a misdemeanor proceeding, the failure to appear is graded as Category One. If the parolee is also convicted of the theft, or if the Commission makes an independent finding of the theft, apply the multiple separate offense procedure.]]

- (c) **Note:** For purposes of this subsection, a misdemeanor is defined as an offense for which the maximum penalty authorized by law (not necessarily the penalty actually imposed) does not exceed one year.

618 Contempt of Court

- (a) **Criminal Contempt** (re: 18 U.S.C. 402). Where imposed in connection with a prisoner serving a sentence for another offense, add ≤6 months to the guidelines otherwise appropriate.
- (b) **Exception:** If a criminal sentence is imposed under 18 U.S.C. 401 for refusal to testify concerning a criminal offense, grade such conduct as if "accessory after the fact".
- (c) **Civil Contempt.** See 28 C.F.R. 2.10.

SUBCHAPTER C - OFFICIAL CORRUPTION

621 Bribery or Extortion [use of official position - no physical threat]

- (a) Grade as a "theft offense" according to the value of the bribe demanded or received, or the favor received by the bribe-giver (whichever is greater), but not less than Category Three. The "favor received" is the gross value of the property, contract, obligation, interest, or payment intended to be awarded to the bribe-giver in return for the bribe. Grade the bribe-taker in the same manner. [[Notes and Procedures. Example 621-1: A federal employee accepts a \$10,000 bribe to approve a fraudulent claim of \$80,000. The applicable value to be used in grading this offense is \$80,000.]]
- (b) If the above conduct involves a pattern of corruption (e.g., multiple instances), grade as not less than Category Four.
- (c) If the purpose of the conduct is the obstruction of justice, grade as if "perjury".
- (d) **Notes:**
- (1) The grading in this subchapter applies to each party to a bribe.
 - (2) The extent to which the criminal conduct involves a breach of public trust, causing injury beyond that describable by monetary gain, may be considered as an aggravating factor.

622 Other Unlawful Use of Governmental Position
Category Two.

SUBCHAPTER D - VOTING FRAUD

631 Voting Fraud
Category Four.

CHAPTER SEVEN - OFFENSES INVOLVING INDIVIDUAL RIGHTS

SUBCHAPTER A - OFFENSES INVOLVING CIVIL RIGHTS

701 Conspiracy Against Rights of Citizens (re: 18 U.S.C. 241)

- (a) If death results, grade as Category Eight;
- (b) Otherwise, grade as if "assault".

702 Deprivation of Rights Under Color of Law (re: 18 U.S.C. 242)

- (a) If death results, grade as Category Eight;
- (b) Otherwise, grade as if "assault".

703 Federally Protected Activity (re: 18 U.S.C. 245)

- (a) If death results, grade as Category Eight;
- (b) Otherwise, grade as if "assault".

*Terms marked by an asterisk are defined in Chapter Thirteen.

- 704 Intimidation of Persons in Real Estate Transactions Based on Racial Discrimination (re: 42 U.S.C. 3631)
(a) If death results, grade as Category Eight;
(b) Otherwise, grade as if "assault".

- 705 Transportation of Strikebreakers (re: 18 U.S.C. 1231)
Category Two.

SUBCHAPTER B - OFFENSES INVOLVING PRIVACY

- 711 Interception and Disclosure of Wire or Oral Communications (re: 18 U.S.C. 2511)
Category Two.
- 712 Manufacture, Distribution, Possession, and Advertising of Wire or Oral Communication Intercepting Devices (re: 18 U.S.C. 2512)
(a) Category Three.
(b) Exception: If simple possession, grade as Category Two.
- 713 Unauthorized Opening of Mail
Category Two.

CHAPTER EIGHT - OFFENSES INVOLVING EXPLOSIVES AND WEAPONS

SUBCHAPTER A - EXPLOSIVES OFFENSES AND OTHER DANGEROUS ARTICLES

- 801 Unlawful Possession or Distribution of Explosives; or Use of Explosives During a Felony
Grade according to offense intended, but not less than Category Five.
- 802 Mailing Explosives or Other Injurious Articles with Intent to Commit a Crime
Grade according to offense intended, but not less than Category Five.

SUBCHAPTER B - FIREARMS/AMMUNITION

- 811 Possession by Prohibited Person (e.g., ex-felon)
(a) If single weapon (rifle, shotgun, handgun), or ammunition of the same caliber, or ammunition of a single caliber (without weapon), grade as Category Three;
(b) If multiple weapons (rifles, shotguns, handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four.

[[Notes and Procedures. Aliens illegally in the United States are also prohibited by federal law from possession of firearms.]]

- 812 Unlawful Possession or Manufacture of Sawed-off Shotgun*, Machine Gun, Silencer, or Assassination Kit*
(a) If silencer or assassination kit*, grade as Category Six;
(b) If sawed-off shotgun* or machine gun, grade as Category Five.

[[Notes and Procedures. (1) Consider unlawful possession of a weapon combined with other offenses under the multiple separate offense procedure of Chapter Thirteen. (2) Possession/manufacture of a sawed-off rifle is graded as Category Three.]]

- 813 Unlawful Distribution of Weapons or Possession with Intent to Distribute
(a) If silencer(s) or assassination kit(s)*, grade as Category Six;
(b) If sawed-off shotgun(s)* or machine gun(s), grade as Category Five;
(c) If multiple weapons (rifles, shotguns, or handguns), or ammunition of different calibers, or single weapon and ammunition of a different caliber, grade as Category Four;

*Terms marked by an asterisk are defined in Chapter Thirteen.

- (d) If single weapon (rifle, shotgun, handgun) with or without ammunition of the same caliber, or ammunition of a single caliber without a weapon, grade as Category Three.

CHAPTER NINE - OFFENSES INVOLVING ILLICIT DRUGS

SUBCHAPTER A - HEROIN AND OPIATE* OFFENSES

901 Distribution or Possession with Intent to Distribute

- (a) If extremely large scale (e.g., involving 3 kilograms or more of 100% pure heroin, or equivalent amount), grade as Category Eight [except as noted in (c) below];
- (b) If very large scale (e.g., involving 1 kilogram but less than 3 kilograms of 100% pure heroin, or equivalent amount), grade as Category Seven [except as noted in (c) below];
- (c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
- (d) If large scale (e.g., involving 50-999 grams of 100% pure heroin, or equivalent amount), grade as Category Six [except as noted in (e) below];
- (e) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (d) as Category Five.
- (f) If medium scale (e.g., involving 5-49 grams of 100% pure heroin, or equivalent amount), grade as Category Five;
- (g) If small scale (e.g., involving less than 5 grams of 100% pure heroin, or equivalent amount), grade as Category Four.

902 Simple Possession Category One.

[[Notes and Procedures. (1) The following list contains drugs classified as opiates/synthetic opiate substances (21 C.F.R. 1308):

| | | |
|-----------------------|--------------------------|--------------------------------------|
| Acetorphine | Etonitazene | Normorphine |
| Acetyldihydrocodeine | Etorphine | Norpipanone |
| Acetylmethadol | Etorphine hydrochloride | Opium |
| Allylprodine | Etosexidine | Raw Opium |
| Alphacetylmethadol | Fentanyl | Opium Extracts |
| Alphameprodine | Furethidine | Opium Fluid Extracts |
| Alphamethadol | Heroin | Powdered Opium |
| Alpha-methylfentanyl | Hydrocodone | Granulated Opium |
| Propionanilide | Hydromorfinol | Tincture of Opium |
| Alphaprodine | Hydromorphone | Oxycodone |
| Anileridine | Hydroxypethidine | Oxymorphone |
| Benzethidine | Isomethadone | Pethidine |
| Benzylmorphine | Ketobemidone | (meperidine) |
| Betacetylmethadol | Levomethorpan | Pethidine-Intermediate-Betameprodine |
| | Levomoramide | 4-cyano-1-methyl-4- |
| Betamethadol | Levophenacymorphan | phenylpiperidine |
| Betaprodine | Levorphanol | Pethidine-Intermediate-B, |
| Bezitramide | Metazocine | ethyl-4-phenylpiperidine-4- |
| Clonitazene | Methadone | carboxylate |
| Codeine | Methadone-Intermediate, | Pethidine-Intermediate-C, 1- |
| Codeine Methylbromide | 4-cyano-2-dimethylamino- | methyl-4-phenylpiperidine- |
| Codeine-N-Oxide | 4, 4-diphenyl butane | 4-carboxylic acid |
| Cyprenorphine | Methyldesorphine | Phenadoxone |
| Desomorphine | Methyldihydromorphone | Phenampromide |
| Dextromoramide | Metopon | Phenazocine |
| Dextropropoxyphene | Morpheridine | Phenomorphan |

*Terms marked by an asterisk are defined in Chapter Thirteen.

| | | |
|------------------------|---|---|
| (Bulk non-dosage form) | Morphine | Phenoperidine |
| Diampromide | Morphine Methylbromide | Pholcodine |
| Diethylthiambutene | Morphine Methylsulfonate | Piminodine |
| Difenoxin | Morphine-N-Oxide | Piritramide |
| Dihydrocodeine | Moramide | Proheptazine |
| Dihydromorphine | Moramide-Intermediate, | Properidine |
| Dimenoxadol | 2-methyl-3 morpholino-1, | Propiram |
| Dimepheptanol | 1-diphenylpropane- | Racemethorphan |
| Dimethylthiambutene | carboxylic acid | Racemoramide |
| Dioxaphetyl butyrate | Myrophine | Racemorphan |
| Diphenoxylate | Nicocodeine | Sufentanil |
| Dipipanone | Nicomorphine | Thebacon |
| Drotebanol | Noracymethadol | Thebaine |
| Ethylmethylthiambutene | Norlevorphanol | Tilidine |
| Ethylmorphine | Normethadone | Trimeperidine |
| 3-Methylfentanyl | 1-Methyl-4-phenyl-4- propionoxypiperidine(MPP) | 1-(2-Phenylethyl)-4-phenyl-4- acetyloxypiperidine(PEPAP) |

(2) Certain drugs such as Talwin have opiate characteristics but are not counted as opiates/synthetic opiate substances in determining the offense severity.

(3) In accordance with 21 C.F.R. 1308, dextropropoxyphene will be counted as an opiate in determining the offense severity only when it is found in bulk form (not when found in capsule form prepared under the brand name of Darvon).

(4) Common Brand Names of Opiates (this list is not inclusive):

| | |
|-----------------------------|----------------------------|
| Amidone (Methadone) | Methadose (Methadone) |
| Demerol (Pethidine) | Nisentil (Alphaprodine) |
| Dilaudid (Hydromorphone) | Nucodan (Oxycodone) |
| Dolophine (Methadone) | Numorphan (Oxymorphone) |
| Dover's Powder (Opium) | Palfium (Dextromoramide) |
| Dromoran (Racemorphan) | Paracodin (Dihydrocodeine) |
| Ethnine (Pholcodine) | Paragoric (Opium) |
| Heptalgin (Phenadoxone) | Percodan (Oxycodone) |
| Hycodan (Hydrocodone) | Pethadol (Pethidine) |
| Leritine (Anileridine) | Pholdine (Pholcodine) |
| Levo-Dromoran (Levorphanol) | Pipadone (Dipipanone) |
| Levorphan (Levorphanol) | Prinadol (Phenazocine) |

(5) Conversion of Common Opiates to Heroin Equivalent. The following chart may be used to convert common opiates to their heroin equivalent (e.g., 67.4 grams of pure methadone x .5 = 33.7 grams of pure heroin equivalent; 42.6 grams of pure hydromorphone x 2.5 = 106.5 grams of pure heroin equivalent):

| | |
|----------------------------|-------------------|
| 1 gm. alpha-methylfentanyl | = 10 gms. heroin |
| 1 gm. alphaprodine | = .1 gm. heroin |
| 1 gm. anileridine | = .1 gm. heroin |
| 1 gm. codeine | = .08 gm. heroin |
| 1 gm. dextromoramide | = .67 gm. heroin |
| 1 gm. dextropropoxyphene | = .05 gm. heroin |
| 1 gm. dihydrocodeine | = .05 gm. heroin |
| 1 gm. dihydrocodeinone | = .5gm. heroin |
| 1 gm. dihydromorphanone | = 2.5 gms. heroin |
| 1 gm. dipipanone | = .25 gm. heroin |
| 1 gm. ethylmorphine | = .165 gm. heroin |

*Terms marked by an asterisk are defined in Chapter Thirteen.

1 gm. fentanyl = 2.5 gms. heroin
 1 gm. hydrocodone = .5 gm. heroin
 1 gm. hydromorphone = 2.5 gms. heroin
 1 gm of levo-alpha-acetylmethadol (LAAM) = 3 gm. heroin
 1 gm. levorphanol = 2.5 gm. heroin
 1 gm. MPPP = .7 gm. heroin
 1 gm. methadone = .5 gm. heroin
 1 gm. 3-methylfentanyl = 10 gms. heroin]]
 1 gm. metopon = .86 gm. heroin
 1 gm of mixed alkaloids of opium/papaveretum = .25 gm. heroin
 1 gm. 6-monoacetylmorphine = 1 gm. heroin
 1 gm. morphine = .5 gm. heroin
 1 gm. opium = .05 gm. heroin
 1 gm. oxycodone = .5 gm. heroin
 1 gm. oxymorphone = 5 gms. heroin
 1 gm. PEPAP = .7 gm. heroin
 1 gm. paragoric = .003 gm. heroin
 1 gm. pethidine (meperidine) = .05 gm. heroin
 1 gm. phenadoxone = .15 gm. heroin
 1 gm. racemorphan = .8 gm. heroin

SUBCHAPTER B - MARIJUANA AND HASHISH OFFENSES

911 Distribution or Possession with Intent to Distribute

- (a) If extremely large scale (e.g., involving 20,000 pounds or more of marijuana/6,000 pounds or more of hashish/600 pounds or more of hash oil), grade as Category Six [except as noted in (b) below];
- (b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;
- (c) If very large scale (e.g., involving 2,000-19,999 pounds of marijuana/600-5,999 pounds of hashish/60-599 pounds of hash oil), grade as Category Five;
- (d) If large scale (e.g., involving 200-1,999 pounds of marijuana/60-599 pounds of hashish/6-59.9 pounds of hash oil), grade as Category Four;
- (e) If medium scale (e.g., involving 50-199 pounds of marijuana/15-59.9 pounds of hashish/1.5-5.9 pounds of hash oil), grade as Category Three;
- (f) If small scale (e.g., involving 10-49 pounds of marijuana/3-14.9 pounds of hashish/.3-1.4 pounds of hash oil), grade as Category Two;
- (g) If very small scale (e.g., involving less than 10 pounds of marijuana/less than 3 pounds of hashish/less than .3 pounds of hash oil), grade as Category One.

912 Simple Possession

Category One.

[[*Notes and Procedures.* (1) 1 liter of hash(ish) oil in liquid form = 2.2 lbs. of hash oil in solid form. (2) Marijuana offenses are normally graded by bulk quantity. In determining quantity for guideline purposes, all parts of the marijuana plant as seized and weighed in bulk (e.g., from a shipment of marijuana being imported), or as negotiated for sale if no seizure is made, are counted. Occasionally, it may be necessary to estimate the scale of the offense from acreage under cultivation or from the number of plants seized. In the absence of more specific information, use the following minimum estimates. Grade 1 plant as equivalent to attempted production of 1/4 lb. of useable marijuana. Note: In the United States, marijuana is frequently grown interspersed with other crops to disguise the marijuana. In such cases, estimate 500 marijuana plants (125 lbs.) per acre. Where marijuana is the only crop under cultivation (e.g., in certain foreign locations), estimate 4,000 plants (1000 lbs.) per acre.]]

*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER C - COCAINE OFFENSES

921 Distribution or Possession with Intent to Distribute

- (a) If extremely large scale (e.g., involving 15 kilograms or more of 100% purity, or equivalent amount; or 1.5 kilograms or more of freebased cocaine), grade as Category Eight [except as noted in (c) below];
- (b) If very large scale (e.g., involving 5 kilograms but less than 15 kilograms of 100% purity, or equivalent amount; or 500 grams but less than 1.5 kilograms of freebased cocaine), grade as Category Seven [except as noted in (c) below];
- (c) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) or (b) as Category Six;
- (d) If large scale (e.g., involving more than 1 kilogram but less than 5 kilograms of 100% purity, or equivalent amount; or more than 100 grams but less than 500 grams of freebased cocaine), grade as Category Six [except as noted in (e) below];
- (e) Where the Commission finds that the offender had only a peripheral role, grade conduct under (d) as Category Five;
- (f) If medium scale (e.g., involving 100 grams-1 kilogram of 100% purity, or equivalent amount; or 10 grams-100 grams of freebased cocaine), grade as Category Five;
- (g) If small scale (e.g., involving 5-99 grams of 100% purity, or equivalent amount; or 1 gram-9.9 grams of freebased cocaine), grade as Category Four;
- (h) If very small scale (e.g., involving 1.0-4.9 grams of 100% purity, or equivalent amount; or less than 1 gram of freebased cocaine), grade as Category Three.
- (i) If extremely small scale (e.g., involving less than 1 gram of 100% purity, or equivalent amount), grade as Category Two.

922 Simple Possession Category One.

[[*Notes and Procedures.* (1) Freebased cocaine is often referred to as "crack". (2) Cocaine paste: 1 gram of cocaine paste is equivalent to 0.4 grams of pure cocaine.]]

SUBCHAPTER D - OTHER ILLICIT DRUG OFFENSES*

931 Distribution or Possession with Intent to Distribute

- (a) If very large scale (e.g., involving more than 200,000 doses), grade as Category Six [except as noted in (b) below];
- (b) Where the Commission finds that the offender had only a peripheral role*, grade conduct under (a) as Category Five;
- (c) If large scale (e.g., involving 20,000-200,000 doses), grade as Category Five;
- (d) If medium scale (e.g., involving 1,000-19,999 doses), grade as Category Four;
- (e) If small scale (e.g., involving 200-999 doses), grade as Category Three;
- (f) If very small scale (e.g., involving less than 200 doses), grade as Category Two.

932 Simple Possession Category One.

[[*Notes and Procedures.* Dosage Units. A dose of a drug is equivalent to 1 capsule, tablet, cigarette (500 mg.), gelatin square, button, or other common unit of sale. If the drug is in bulk form, a lab report from DEA may have converted the amount to doses. This information should be in the Presentence Report. If this information is not available, the following chart may be used.

HALLUCINOGENS

| | |
|------------------|---------|
| Anhalamine | 300 mg. |
| Anhalonide | 300 mg. |
| Anhalonine | 300 mg. |

*Terms marked by an asterisk are defined in Chapter Thirteen.

| | |
|--|---------|
| Bufotenine | 1 mg. |
| Diethyltryptamine | 60 mg. |
| Dimethyltryptamine | 50 mg. |
| Lophophorine | 300 mg. |
| LSD (Lysergic acid diethylamide) | .1 mg. |
| LSD tartrate | .05 mg. |
| MDA | 100 mg. |
| MDMA [3, 4-Methylenedioxymethamphetamine (Ecstasy)] | 130 mg. |
| Mescaline | 500 mg. |
| PCP (solid) | 5 mg. |
| PCP (liquid) | 50 mg. |
| PCP ("laced"/sprayed cigarette)..... [e.g. one ounce of marijuana laced with PCP would equal approximately 56 dosage units of PCP] | 500 mg. |
| PCP 1 gallon equals 720,000 dosage units | |
| Pellotine | 300 mg. |
| Peyote | 12 gms. |
| Psilocin | 10 mg. |
| Psilocybin | 10 mg. |
| Psilocybin Mushrooms (fresh)..... | 50 gms. |
| Psilocybin Mushrooms (dried) | 5 gms. |
| STP (DOM) Dimethoxyamphetamine | 3 mg. |
| DEPRESSANTS | |
| Barbituates | 100 mg. |
| Brallobarbitol | 30 mg. |
| Eldoral | 100 mg. |
| Eunarcon | 100 mg. |
| Hexethel | 100 mg. |
| Methaqualone | 300 mg. |
| Thiobarbitol | 50 mg. |
| Thiohexethal | 60 mg. |
| STIMULANTS | |
| Amphetamines | 10 mg. |
| Ethylamphetamine HCL | 12 mg. |
| Ethylamphetamine SO ₄ | 12 mg. |
| Methamphetamine combinations | 5 mg. |
| Methamphetamines | 5 mg. |
| Preludin | 25 mg. |
| OTHER | |
| Talwin | 50 mg. |

The dosage equivalents noted above represent the amount of the pure drug that is contained in an average dose. For example, 10 milligrams (mg.) of amphetamine per dose means 10 milligrams of pure amphetamine per dose. Thus, if an offender was in possession of 50 grams of a powder which tested to be 20% pure amphetamine, the appropriate calculations would be as follows: 50 grams x 1000 = 50,000 milligrams [conversion from grams to milligrams]; 50,000 milligrams x .20 purity = 10,000 milligrams of pure amphetamine [conversion to pure amphetamine]; 10,000 milligrams / 10 milligrams per dose = 1,000 doses [division by the number of milligrams per dose]. In this example, the bulk quantity would convert to 1,000 doses of amphetamine.]]

--- NOTES TO CHAPTER NINE

- (1) **Grade manufacture of synthetic illicit drugs as listed above, but not less than Category Five.** *[[Notes and Procedures. Grade manufacture of synthetic illicit drugs according to the amount actually manufactured, but not less than Category Five. Note: because of the variety of chemical processes that may be used and the differential in skill of the individuals involved, estimates as to how much a laboratory could produce in the future from materials at hand may vary widely and, thus, are not used in assessing the severity rating.]]*
- (2) **"Equivalent amounts" for the cocaine and opiate categories may be computed as follows: 1 gram of 100% pure is equivalent to 2 grams of 50% pure and 10 grams of 10% pure, etc.**
- (3) **Grade unlawful possession or distribution of precursors of illicit drugs as Category Five (i.e., aiding and abetting the manufacture of synthetic illicit drugs).**
- (4) **If weight, but not purity is available, the following grading may be used:**

Heroin

| | |
|------------------------------|------------------------------------|
| Extremely large scale | 6 Kilograms or more |
| Very large scale | 2 kilograms -5.99 kilograms |
| Large scale | 200 grams -1.99 kilograms |
| Medium scale | 28.35 grams -199.99 grams. |
| Small scale | Less than 28.35 grams |

Cocaine

| | |
|------------------------------|--|
| Extremely large scale | 18.75 kilograms or more |
| Very large scale | 6.25 kilograms -18.74 kilograms |
| Large scale | 1.25 kilograms - 6.24 kilograms |
| Medium scale | 200 grams -1.24 kilograms |
| Small scale | 20 grams -199.99 grams |
| Very small scale | 4 grams -19.99 grams |
| Extremely small scale | Less than 4 grams |

[[Notes and Procedures. Drug Offense Severity Calculations.

(a) Opiate/cocaine offenses are normally graded according to the quantity/ purity of the drug involved. Marijuana/hashish offenses are normally graded by bulk quantity. Other illicit drug offenses are normally graded by the number of doses.

(b) If (and only if) the above information is not available, it may be possible to determine the appropriate severity rating from other information in the file [see (g)].

(c) The severity of drug offenses is to be classified by scale. In some cases, the drugs actually confiscated may not accurately reflect the scale of the offense. For example, convincing evidence of negotiations and transactions of large quantities of drugs over a long period of time may be a more appropriate basis for rating the scale of the drug offense than weight/purity if the evidence shows that only one of many shipments was actually confiscated by authorities. Any evidence used to assess the offense severity must meet the preponderance standard, and the facts relied upon must be noted specifically on the Notice of Action.

(d) *Measurement Conversion Chart*

| | |
|-------------------------|---------------------------|
| 1 ounce = 28.35 grams | 1 quart = .95 liters |
| 1 pound = 453.6 grams | 1 kilogram = 1,000 grams |
| 1 pound = .45 kilograms | 1 gram = 1,000 milligrams |
| 1 kilogram = 2.2 pounds | 1 grain = 64.8 milligrams |
| 1 gallon = 3.8 liters | |

(e) *How to Convert to "equivalent amounts"*. The following formula is to be used in calculating 100% pure equivalency for cocaine and heroin offenses:

$$\begin{array}{ccc} \text{Quantity Involved} & \times & \text{Actual Purity} \\ \text{[expressed in grams]} & & \text{[expressed as a decimal]} \end{array}$$

Example (1) If the offense involved 3 ounces of 32.6% pure cocaine, it is first necessary to convert ounces to grams, and then to multiply by the purity expressed as a decimal (i.e., .326). The necessary calculations are:

$$\begin{array}{ccccccc} 3 & \times & 28.35 & \times & .326 & = & 27.73 \text{ grams} \\ \text{(ounces)} & \text{(\# of grams in an ounce)} & & \text{(purity)} & \text{(100\% pure)} & & \end{array}$$

Example (2) If the offense involved one-half ounce of 7% pure heroin, the necessary calculations are:

$$\begin{array}{ccccccc} .5 & \times & 28.35 & \times & .07 & = & .99 \text{ grams} \\ \text{(ounces)} & \text{(\# of grams in an ounce)} & & \text{(purity)} & \text{(100\% pure)} & & \end{array}$$

Example (3) If the offense involved 68 grams of 23% pure heroin, the only conversion necessary is to pure heroin equivalency, i.e.: 68 (grams X .23) (purity) = 15.64 grams (100% purity).

(f) *Drug Purity - DEA Form 7*

(1) The presentence report will normally provide drug weight/purity information from DEA Form 7. This is a complicated form. "Total net weight" [normally in Item 31] refers to the amount of the pure drug. This is the weight used in calculation of the Commission's severity rating. For your information, "gross weight" is the weight of the drug plus adulterants plus the container (normally found in Item 24). Also normally found in Item 24 is "net weight" (the weight of the drug plus adulterants). "Strength" (the percent purity of the drug) is normally found in Item 28. Multiplying "net weight" x "strength" is how DEA arrives at the "total net weight". Remember, "total net weight" is the weight of the pure drug to be used in assessing the Commission's severity rating.

(2) If a presentence report does not specify "total net weight", the probation officer should be contacted for clarification (please be specific as to the clarification necessary; this will enhance feedback/training). Note: DEA lab reports (DEA Form 7), if necessary, also may be obtained directly from the DEA field office for the geographic area in which the offense occurred. If a request to the DEA field office is required, provide the subject's name, date of birth, place of offense, and dates of offense.

(g) If neither weight nor purity is available, but only a money value, DEA may be requested to provide an estimate of the amount of pure drug associated with that money value. In the absence of a specific estimate from DEA pertaining to the particular case, DEA publishes a report (Domestic Drug Prices) providing estimates of average drug prices by year and region from which an estimate may be obtained.

(h) *Determining Offense Severity Relative to Simple Possession of Drugs*. In certain cases, the Commission must determine whether the offense behavior should be considered as "simple possession" of a controlled substance or "possession with intent to distribute." In making this determination, the Commission shall examine a variety of factors (if available). These factors are shown below. The presence of any of the following factors may be considered as a presumption of possession with intent to distribute. However, this presumption may be rebutted if there are circumstances in the individual case which indicate that there was no intention to distribute.

(1) *Weight/amount/purity of the substance*: Possession of the following amounts of controlled substances are presumed to indicate possession with intent to distribute:

Heroin 1 gm. at 100% purity, or equivalent amount; or more
Cocaine 5 gms. at 100% purity, or equivalent amount; or more
Marijuana 10 lbs. or more
Hashish 3 lbs. or more
Hash Oil .3 lbs. or more
Drugs (other than above) 1,000 doses or more.

(2) *Other Factors*: The presence of any of the following factors may be considered indicative of intent to distribute: the substance has been separated into multiple, individual packets; the offender is a non-user of the substance in question; the presence of instruments used in preparing a substance for sale (e.g., a scale) or a large amount of cash at the scene of the arrest; or the offender was seized with the substance while traveling or was arrested with the substance soon after traveling.]]

CHAPTER TEN - OFFENSES INVOLVING NATIONAL DEFENSE

SUBCHAPTER A - TREASON AND RELATED OFFENSES

1001 Treason

Category Eight.

1002 Rebellion or Insurrection

Category Seven.

SUBCHAPTER B - SABOTAGE AND RELATED OFFENSES

1011 Sabotage

Category Eight.

1012 Enticing Desertion

- (a) In time of war or during a national defense emergency, grade as Category Four;
- (b) Otherwise, grade as Category Three.

1013 Harboring or Aiding a Deserter

Category One.

SUBCHAPTER C - ESPIONAGE AND RELATED OFFENSES

1021 Espionage

Category Eight.

SUBCHAPTER D - SELECTIVE SERVICE OFFENSES

1031 Failure to Register, Report for Examination or Induction

- (a) If committed during time of war or during a national defense emergency, grade as Category Four;
- (b) If committed when draftees are being inducted into the armed services, grade as Category Three;
- (c) Otherwise, grade as Category One.

SUBCHAPTER E - OTHER NATIONAL DEFENSE OFFENSES

1041 Offenses Involving Nuclear Energy

Unauthorized production, possession, or transfer of nuclear weapons or special nuclear material or receipt of or tampering with restricted data on nuclear weapons or special nuclear material, grade as Category Eight.

*Terms marked by an asterisk are defined in Chapter Thirteen.

1042 Violations of Export Administration Act (Re: 50 U.S.C. 2410)

Grade conduct involving "national security controls" or "nuclear nonproliferation controls" as Category Six.
[[*Notes and Procedures.* Conduct not covered by the above described parameters is to be graded under Chapter Twelve.]]

1043 Violations of the Arms Control Act (Re: 22 U.S.C. 2778)

- (a) Grade conduct involving export of sophisticated weaponry (e.g., aircraft, helicopters, armed vehicles, or "high technology" items) as Category Six.
- (b) Grade conduct involving export of other weapons (e.g., rifles, handguns, machine guns, or hand grenades) as if a weapons/explosive distribution offense under Offenses Involving Explosives and Weapons (Chapter Eight).

**CHAPTER ELEVEN - OFFENSES INVOLVING ORGANIZED CRIMINAL ACTIVITY,
GAMBLING, OBSCENITY, SEXUAL EXPLOITATION OF CHILDREN, PROSTITUTION,
NONGOVERNMENTAL CORRUPTION, CURRENCY TRANSACTIONS, AND THE ENVIRONMENT**

SUBCHAPTER A - ORGANIZED CRIME OFFENSES

1101 Racketeer Influence and Corrupt Organizations (re: 18 U.S.C. 1961-63)

Grade according to the underlying offense attempted, but not less than Category Five.

1102 Interstate or Foreign Travel or Transportation in Aid of Racketeering Enterprise (re: 18 U.S.C. 1952)

Grade according to the underlying offense attempted, but not less than Category Three.

SUBCHAPTER B - GAMBLING OFFENSES

1111 Gambling Law Violations - Operating or Employment in an Unlawful Business (re: 18 U.S.C. 1955)

- (a) If large scale operation [e.g., Sports books (estimated daily gross more than \$15,000); Horse books (estimated daily gross more than \$4,000); Numbers bankers (estimated daily gross more than \$2,000); Dice or card games (estimated daily "house cut" more than \$1,000); Video gambling (eight or more machines)]; grade as Category Four;
- (b) If medium scale operation [e.g., Sports books (estimated daily gross \$5,000 - \$15,000); Horse books (estimated daily gross \$1,500 - \$4,000); Numbers bankers (estimated daily gross \$750 - \$2,000); Dice or card games (estimated daily "house cut" \$400 - \$1,000); Video gambling (four-seven machines)]; grade as Category Three;
- (c) If small scale operation [e.g., Sports books (estimated daily gross less than \$5,000); Horse books (estimated daily gross less than \$1,500); Numbers bankers (estimated daily gross less than \$750); Dice or card games (estimated daily "house cut" less than \$400); Video gambling (three or fewer machines)]; grade as Category Two;
- (d) Exception: Where it is established that the offender had no proprietary interest or managerial role, grade as Category One.

1112 Interstate Transportation of Wagering Paraphernalia (re: 18 U.S.C. 1953)

Grade as if "operating a gambling business".

1113 Wire Transmission of Wagering Information (re: 18 U.S.C. 1084)

Grade as if "operating a gambling business".

1114 Operating or Owning a Gambling Ship (re: 18 U.S.C. 1082)

Category Three.

**1115 Importing or Transporting Lottery Tickets; Mailing Lottery Tickets or Related Matter
(re: 18 U.S.C. 1301, 1302)**

- (a) Grade as if "operating a gambling business";
- (b) Exception: If non-commercial, grade as Category One.

*Terms marked by an asterisk are defined in Chapter Thirteen.

SUBCHAPTER C - OBSCENITY

1121 Mailing, Importing, or Transporting Obscene Matter

- (a) If for commercial purposes, grade as Category Three;
- (b) Otherwise, Category One.

1122 Broadcasting Obscene Language

Category One.

SUBCHAPTER D - SEXUAL EXPLOITATION OF CHILDREN

1131 Sexual Exploitation of Children* (re: 18 U.S.C. 2251, 2252)

- (a) Category Six;
- (b) Exception: Where the Commission finds the offender had only a peripheral role (e.g., a retailer receiving such material for resale but with no involvement in the production or wholesale distribution of such material), grade as Category Five.

SUBCHAPTER E - PROSTITUTION AND WHITE SLAVE TRAFFIC

1141 Interstate Transportation for Commercial Purposes

- (a) If physical coercion, or involving person(s) of age less than 18, grade as Category Six;
- (b) Otherwise, grade as Category Four.

[[Notes and Procedures. The term "for commercial purposes" refers to procuring a sexual partner for another for profit.]]

1142 Prostitution

Category One.

SUBCHAPTER F - NON-GOVERNMENTAL CORRUPTION

1151 Demand or Acceptance of Unlawful Gratuity Not Involving Federal, State, or Local Government Officials

Grade as if a fraud offense according to (1) the amount of the bribe offered or demanded, or (2) the financial loss to the victim, whichever is higher.

1152 Sports Bribery

If the conduct involves bribery in a sporting contest, grade as if a theft offense according to the amount of the bribe, but not less than Category Three.

SUBCHAPTER G - CURRENCY OFFENSES

1161 Reports on Monetary Instrument Transactions

- (a) If extremely large (e.g., the estimated gross amount of currency involved is more than \$5,000,000), grade as Category Seven.
- (b) If very large scale (e.g., the estimated gross amount of currency involved is more than \$1,000,000 but not more than \$5,000,000), grade as Category Six.
- (c) If large scale (e.g., the estimated gross amount of currency involved is more than \$200,000 but not more than \$1,000,000), grade as Category Five;
- (d) If medium scale (e.g., the estimated gross amount of currency involved is at least \$40,000 but not more than \$200,000), grade as Category Four.
- (e) If small scale (e.g., the estimated gross amount of currency involved is less than \$40,000), grade as Category Three.

SUBCHAPTER H - ENVIRONMENTAL OFFENSES

*Terms marked by an asterisk are defined in Chapter Thirteen.

1171 Knowing Endangerment Resulting From Unlawful Treatment, Transportation, Storage, or Disposal of Hazardous Waste [Re: 42 U.S.C. 6928(e)]

- (a) If death results, grade as Category Seven;
- (b) If serious bodily injury results, grade as Category Six;
- (c) Otherwise, grade as Category Five.
- (d) **Note:** Knowing Endangerment requires a finding that the offender knowingly transported, treated, stored, or disposed of any hazardous waste and knew that he thereby placed another person in imminent danger of death or serious bodily injury.

1172 Knowing Disposal and/or Storage and Treatment of Hazardous Waste Without a Permit; Transportation of Hazardous Waste to an Unpermitted Facility [Re: 42 U.S.C. 6928(d)(1-2)]

- (a) If death results, grade as Category Six;
- (b) If (1) serious bodily injury results; or (2) a substantial potential for death or serious bodily injury in the future results; or (3) a substantial disruption to the environment results (e.g., estimated cleanup cost exceeds \$200,000, or a community is evacuated for more than 72 hours), grade as Category Five;
- (c) If (1) bodily injury results, or (2) a significant disruption to the environment results (e.g., estimated cleanup costs of \$40,000-\$200,000, or a community is evacuated for 72 hours or less), grade as Category Four;
- (d) Otherwise, grade as Category Three;
- (e) **Exception:** Where the offender is a non-managerial employee (i.e., a truckdriver or loading dock worker) acting under the orders of another person, grade as two categories below the underlying offense, but not less than Category One.

[[Notes and Procedures. Grade environmental offenses not listed above under Chapter 12.]]

CHAPTER TWELVE - MISCELLANEOUS OFFENSES

If an offense behavior is not listed, the proper category may be obtained by comparing the severity of the offense behavior with those of similar offense behaviors listed in Chapters One - Eleven. If, and only if, an offense behavior cannot be graded by reference to Chapters One - Eleven, the following formula may be used as a guide.

| Maximum Sentence Authorized by Statute [Not necessarily the sentence imposed] | Grading (Category) |
|---|-----------------------|
| < 2 yrs | 1 |
| 2 - 3 yrs | 2 |
| 4 - 5 yrs | 3 |
| 6 - 10 yrs | 4 |
| 11 - 20 yrs | 5 |
| 21 - 29 yrs | 6 |
| 30 yrs - life | 7 |

[[Notes and Procedures: The offenses of (1) driving while impaired/intoxicated and (2) unlawful possession of a weapon (other than a firearm or explosive) are generally misdemeanor offenses and thus are graded as Category 1 offenses under this chapter.]]

CHAPTER THIRTEEN - GENERAL NOTES AND DEFINITIONS

SUBCHAPTER A - GENERAL NOTES

1. If an offense behavior can be classified under more than one category, the most serious applicable category is to be used.

*Terms marked by an asterisk are defined in Chapter Thirteen.

2. If an offense behavior involved multiple separate offenses, the severity level may be increased. **Exception:** in cases graded as Category Seven, multiple separate offenses are to be taken into account by consideration of a decision above the guidelines rather than by increasing the severity level.

(a) In certain instances, the guidelines specify how multiple offenses are to be rated. In offenses rated by monetary loss (e.g., theft and related offenses, counterfeiting, tax evasion) or drug offenses, the total amount of the property or drugs involved is used as the basis for the offense severity rating. In instances not specifically covered in the guidelines, the decision-makers must exercise discretion as to whether or not the multiple offense behavior is sufficiently aggravating to justify increasing the severity rating. The following chart is intended to provide guidance in assessing whether the severity of multiple offenses is sufficient to raise the offense severity level; it is not intended as a mechanical rule.

MULTIPLE SEPARATE OFFENSES

| Severity | Points | Severity | Points |
|----------------|--------|----------------|--------|
| Category One | = 1/9 | Category Five | = 9 |
| Category Two | = 1/3 | Category Six | = 27 |
| Category Three | = 1 | Category Seven | = 45 |
| Category Four | = 3 | | |

Examples: 3 Category Five Offenses [3x(9)=27] = Category Six
5 Category Five Offenses [5x(9)=45] = Category Seven
2 Category Six Offenses [2x(27)=54] = Category Seven

(b) The term "multiple separate offenses" generally refers to offenses committed at different times. However, there are certain circumstances in which offenses committed at the same time are properly considered multiple separate offenses for the purpose of establishing the offense severity rating. These include (1) unrelated offenses, and (2) offenses involving the unlawful possession of weapons during commission of another offense. *[[Notes and Procedures.*

Examples:

(1) An offender commits a robbery (Category Five) in which he steals \$80,000 (Category Four). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Five) and not as multiple separate offenses.

(2) An offender commits a robbery (Category Five) in which shots are fired to scare the bank employees (Category Six). Because the offenses occurred at the same time and are related, grade in the highest applicable category (Category Six) and not as multiple separate offenses.

(3) An offender when arrested for smuggling aliens is found also in possession of \$8,000 worth of stolen goods. Even though the offenses were discovered at the same time, they are unrelated; therefore consideration under the multiple separate offenses procedure is appropriate.

(4) An offender commits two robberies and each time he possesses a sawed-off shotgun. Grade under the multiple offense procedure as 3 Category Five offenses (3 x 9 = 27 points) = Category Six. Note that possession of a sawed-off shotgun is treated as one offense for purposes of calculating the offense severity even though the weapon was used to rob two separate banks.

(5) An offender robs four banks and each time he possesses a sawed-off shotgun. The offense severity is based upon four robberies (4 x 9 points = 36 points) and one offense of possessing a sawed-off shotgun (9 points) for a total offense rating of Category Seven (45 points). Note that possession of a sawed-off shotgun is treated as one offense for purposes of calculating the offense severity even though the weapon was used to rob four separate banks.]]

(c) For offenses graded according to monetary value (e.g., theft) and drug offenses, the severity rating is based on the amount or quantity involved and not on the number of separate instances. *[[Notes and Procedures.*

Examples:

(6) An offender forges ten \$1,000 checks for a total of \$10,000, and is then arrested. Grade as a \$10,000 forgery, not ten separate offenses.

(7) An offender steals for resale four automobiles worth a total of \$18,000, and is later arrested. Grade as an \$18,000 theft, not four separate offenses.

(8) An offender breaks into a store, steals \$18,000 worth of merchandise and does \$4,000 damage to the store. Grade as a Category Four offense according to the combined property loss (\$18,000 + \$4,000 = \$22,000).

(9) An offender sells 10 grams of pure heroin on four separate occasions, and is later arrested. Grade as a sale of 40 grams of pure heroin and not four separate offenses.

(10) The offender sells 14,000 doses of PCP and 1,000 lbs. of marijuana. He is then arrested. The amount of the drugs is added together based upon a proportion of the amount of drugs involved in the offense compared to the amount of the drugs needed to raise the offense to the next higher category. In this example, 14,000 doses of PCP is 70% of the amount needed to rate the offense as Category Five and 1,000 lbs. of marijuana is 50% of the amount needed to rate the offense as Category Five. The PCP and marijuana added together equal over 100% of the amount of drugs necessary for a Category Five rating, which is the correct severity rating for this offense.

(11) An offender (with a nonperipheral role) sells 10,000 lbs. of hashish (Category Six) and 250,000 doses of amphetamines (Category Six). He is then arrested. The applicable offense rating is Category Six which is the highest severity category for any combined amount of the above drugs.]]

(d) Intervening Arrests. Where offenses ordinarily graded by aggregation of value/quantity (e.g., property or drug offenses) are separated by an intervening arrest, grade (1) by aggregation of value/quantity or (2) as multiple separate offenses, whichever results in a higher severity category. *[[Notes and Procedures.*

Examples:

(12) An offender commits 3 Category One larcenies (each \$300). Each time the offender is arrested during the act. Ordinarily, such behavior would be graded as Category One (theft of \$900). But since the offenses were each separated by intervening arrests, application of the multiple separate offense procedure ($3 \times 1/9 = 1/3$ points) results in a higher severity category. Therefore, grade as Category Two.

(13) An offender is arrested on three separate occasions unlawfully transporting aliens. Since the offenses were separated by intervening arrests, grade as Category Four ($3 \times 1 = 3$ points).]]

(e) Income Tax Violations Related to Other Criminal Activity. Where the circumstances indicate that the offender's income tax violations are related to failure to report income from other criminal activity (e.g., failure to report income from a fraud offense) grade as tax evasion or according to the underlying criminal activity established, whichever is higher. Do not grade as multiple separate offenses.

3. In cases where multiple sentences have been imposed (whether consecutive or concurrent, and whether aggregated or not) an offense severity rating shall be established to reflect the overall severity of the underlying criminal behavior. This rating shall apply whether or not any of the component sentences has expired.
4. The prisoner is to be held accountable for his own actions and actions done in concert with others; however, the prisoner is not to be held accountable for activities committed by associates over which the prisoner has no control and could not have been reasonably expected to foresee. However, if the prisoner has been convicted of a conspiracy, he must be held accountable for the criminal activities committed by his co-conspirators, provided such activities were committed in furtherance of the conspiracy and subsequent to the date the prisoner joined

the conspiracy.

This policy will not apply in the case of an essentially independent, small-scale operator whose role in the conspiracy was neither established nor significant. An offender has an "established" role in a conspiracy if, for example, he takes orders to perform a function that assists others to further the objectives of the conspiracy, even if his activities did not significantly contribute to those objectives. (For such offenders, a "peripheral role" reduction may be considered.)

5. The following are examples of circumstances that may be considered as aggravating factors: extreme cruelty or brutality to a victim; the degree of permanence or likely permanence of serious bodily injury resulting from the offender's conduct; an offender's conduct while attempting to evade arrest that causes circumstances creating a significant risk of harm to other persons (e.g., causing a high speed chase or provoking the legitimate firing of a weapon by law enforcement officers).
6. The phrase "may be considered an aggravating/mitigating factor" is used in this index to provide guidance concerning certain circumstances which may warrant a decision above or below the guidelines. This does not restrict consideration of a above or below guidelines decisions only to these circumstances, nor does it mean that a decision above or below the guidelines is mandated in every such case.

SUBCHAPTER B - DEFINITIONS

1. "Accessory after the fact" refers to the conduct of one who, knowing an offense has been committed, assists the offender to avoid apprehension, trial, or punishment (e.g., by assisting in disposal of the proceeds of an offense). Note: Where the conduct consists of concealing an offense by making false statements not under oath, grade as "misprision of felony". Where the conduct consists of harboring a fugitive, grade as "harboring a fugitive".
2. "Assassination kit" refers to a disguised weapon designed to kill without attracting attention. Unlike other weapons such as sawed-off shotguns which can be used to intimidate, assassination kits are intended to be undetectable in order to make the victim and bystanders unaware of the threat. A typical assassination kit is usually, but not always, a firearm with a silencer concealed in a briefcase or similar disguise and fired without showing the weapon.
3. "Bodily injury" refers to injury of a type normally requiring medical attention [e.g., broken bone(s), laceration(s) requiring stitches, severe bruises].
4. "Carnal knowledge" refers to sexual intercourse with a female who is less than 16 years of age and is not the wife of the offender.
5. "Extortionate extension of credit" refers to any extension of credit with respect to which it is the understanding of the creditor and the debtor at the time it is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.
6. "Failure to appear" refers to the violation of court imposed conditions of release pending trial, appeal, or imposition or execution of sentence by failure to appear before the court or to surrender for service of sentence. *[[Notes and Procedures. "Failure to appear" is not a strict liability offense. To consider a "failure to appear" in the absence of a conviction for such offense, the Commission must find upon the information presented that such failure was willful.]]*
7. "Forcible felony" includes, but shall not be limited to, kidnaping, rape or sodomy, aircraft piracy or interference with a flight crew, arson or property destruction offenses, escape, robbery, extortion, or criminal entry offenses, and attempts to commit such offenses.
8. "Involuntary manslaughter" refers to the unlawful killing of a human being without malice in the commission of an unlawful act not amounting to a felony, or in the commission in an unlawful manner, or without due caution and circumspection, of a lawful act which might produce death. *[[Notes and Procedures. A finding of involuntary*

manslaughter should only be made where the evidence shows recklessness or gross negligence.

Example 1: An offender, driving while intoxicated and at a high rate of speed, violates the no-passing zone and collides with a car in the opposite lane, killing the other driver.

Example 2: An offender, shooting a high-powered rifle, fires at targets close to a park he knows is well populated and kills a picnicker.

Examples 1 & 2 represent cases which would warrant a finding of recklessness or gross negligence.

Example 3: An offender, driving without a valid license, and traveling 35 m.p.h. in a 25 m.p.h. zone, strikes and kills a jogger who violates the no-walk sign at an intersection.

In *Example 3*, these circumstances probably establish only ordinary negligence and do not warrant a finding of involuntary manslaughter.]]

9. **"Misprision of felony" refers to the conduct of one who, having knowledge of the actual commission of a felony, conceals and does not as soon as possible make known the same to some judge or other person in civil or military authority. The "concealment" described above requires an act of commission (e.g., making a false statement to a law enforcement officer).**
10. **"Murder" refers to the unlawful killing of a human being with malice aforethought. "With malice aforethought" generally refers to a finding that the offender formed an intent to kill or do serious bodily harm to the victim without just cause or provocation.**
11. **"Opiate" includes heroin, morphine, opiate derivatives, and synthetic opiate substitutes.**
12. **"Other illicit drug offenses" include, but are not limited to, offenses involving the following: amphetamines, hallucinogens, barbiturates, methamphetamine, and phencyclidine (PCP).**
13. **"Other medium of exchange" means a bearer instrument, including, but not limited to, postage stamps, governmental money orders, or governmental coupons redeemable for cash or goods. [[Notes and Procedures. The term "other medium of exchange" does not include non-bearer instruments such as checks or credit cards.]]**
14. **"Peripheral role" in drug offenses refers to conduct such as that of a person hired as a deckhand on a marijuana boat, a person hired to help offload marijuana, a person with no special skills hired as a simple courier of drugs on a commercial airline flight, or a person hired as a chauffeur in a drug transaction. This definition does not include persons with decision-making or supervisory authority, persons with relevant special skills (e.g., a boat captain, chemist, or airplane pilot), or persons who finance such operations. Individuals who transport unusually large amounts of drugs (e.g., 50 kilos of cocaine or more) or who otherwise appear to have a high degree of trust, professionalism, or control will be considered to be "transporters" and not "simple couriers". [[Notes and Procedures. (a) Do not presume that an offender's role is peripheral. If an affirmative finding can be made, using the preponderance of the evidence standard, that the offender had a peripheral role in the offense, then the appropriate lower severity rating shall be selected. If no affirmative finding of a peripheral role can be made, then the higher severity rating shall be selected. In determining whether the offender had a peripheral role, the Commission may consider, among other factors, whether the evidence on the offender's role is only his bare assertion of peripheral involvement or whether the offender provided law enforcement authorities with timely details on such matters as the identity of his employer, the source of the drugs, and delivery or operating instructions.**

Example 1: A person is arrested at customs with a large quantity of pure cocaine. The person claims to be a courier but does not cooperate with the arresting agency. In the absence of other information pertaining to the offender's role, no affirmative finding of a peripheral role would appear warranted.

Example 2: A person is arrested at a customs check with a large quantity of pure cocaine. He promptly provides DEA agents with his delivery instructions, although no "controlled" delivery is then attempted. It is established that he has been working as a day laborer, and has been living at the poverty level. In such a case, the Commission may find that a

preponderance of the evidence indicates a peripheral role.

(b) The following are some examples of offenders normally graded as having a peripheral role. This is not intended as an exhaustive or definitive listing: (1) a crewman on a marijuana boat; (2) a person hired to operate a small launch to offload marijuana; (3) a person hired to smuggle cocaine aboard a regularly scheduled commercial flight; (4) a person hired as a lookout, chauffeur, or bodyguard.

(c) The following are some examples of offenders who do not have a peripheral role. This is not intended as an exhaustive or definitive listing: (1) an individual who is hired to go to South America and negotiate the purchase of more than 1 kilogram of pure cocaine and arrange its delivery into the United States; (2) an individual who negotiates the sale of more than 1 kilogram of pure cocaine on behalf of the owner of the drug; (3) the financier of a PCP lab producing more than 200,000 doses of PCP; (4) the captain of a freighter hired to import 20,000 pounds or more of marijuana; (5) the captain/owner of a fishing boat hired to import more than 1 kilogram of pure cocaine; (6) the pilot of a private airplane hired to import more than 1 kilogram of pure cocaine; (7) a chemist hired to operate a PCP laboratory.]]

15. **"Protected person" refers to a person listed in 18 U.S.C. 351 (relating to Members of Congress), 1116 (relating to foreign officials, official guests, and internationally protected persons), or 1751 (relating to presidential assassination and officials in line of succession).**
16. **"Sawed-off shotgun" refers to a shotgun which has a barrel length of less than 18 inches or an overall length of less than 26 inches.**
17. **"Serious bodily injury" refers to injury creating a substantial risk of death, major disability or loss of a bodily function, or disfigurement.**
18. **"Serious bodily injury is the result intended" refers to a limited category of offense behaviors where the circumstances indicate that the bodily injury intended was serious (e.g., throwing acid in a person's face, or firing a weapon at a person) but where it is not established that murder was the intended object. Where the circumstances establish that murder was the intended object, grade as an "attempt to murder".**
19. **"Sexual exploitation of children" refers to employing, using, inducing, enticing, or coercing a person less than 18 years of age to engage in any sexually explicit conduct for the purpose of producing a visual or print medium depicting such conduct with knowledge or reason to know that such visual or print medium will be distributed for sale, transported in interstate or foreign commerce, or mailed. It also includes knowingly transporting, shipping, or receiving such visual or print medium for the purposes of distribution for sale, or knowingly distributing for sale such visual or print medium.**
20. **"Trafficking in stolen property" refers to receiving stolen property with intent to sell.**
21. **The "value of the property" is determined by estimating the actual or potential replacement cost to the victim. The "actual replacement cost" is the value or money permanently lost to the victim through theft/forgery/fraud. The "potential replacement cost" refers to the total loss the offender specifically intended to cause by theft/forgery/fraud, or the total amount of the victim's money or property unlawfully exposed to risk of loss through theft/forgery/fraud notwithstanding subsequent recovery by the victim. The highest of these three values is the value to be used in rating the offense on the guidelines. [[Notes and Procedures. The term "value of the property" refers only to primary losses; not secondary losses. Example (1): An offender defrauds a victim of \$50,000. The value of the property is \$50,000; not any interest or dividends that the victim would have earned had the money been put into a legitimate investment. Example (2): An offender steals tools worth \$16,000; the victim sustains an additional \$500 in lost wages during the time spent testifying at trial. The value of the property stolen "actual replacement cost," i.e., the value of the tools.]]**

A theft/forgery/fraud offense is complete when money or property is unlawfully obtained, and it does not matter that the money or property may later be restored to the victim. Thus, in determining "potential replacement cost" use the amount the offender obtained as a direct result of theft/forgery/fraud. Example (3): A bank president fraudulently represents that certificates of deposit are FDIC-insured. Even though investors are ultimately repaid (through withdrawals and FDIC action after the bank is seized), the "potential replacement cost" is the total amount invested and thereby exposed to a risk

of loss the investors never knowingly accepted. (See Chapter Three, Subchapter C, paragraph 333 for similar treatment of fraudulent loan applications.) Moreover, a purchase induced through fraud is measured by the purchase price, not the difference in value between the purchase price and the goods delivered. Example (4): An offender fraudulently sells real estate or delivers military hardware not meeting government contract specifications. The "value of the property" is the total purchase price of the real estate/military hardware.

When "potential replacement cost" is measured by the intended loss in an uncompleted theft/forgery/fraud scheme, the offender's specific intent maybe inferred from the circumstances. Example (5): An offender places an order with a company for \$100,000 worth of goods, promising to pay by wire transfer of funds. A confederate then calls the company, posing as a bank officer, and says that the wire transfer has been received and credited to the company's account. The company never actually ships the goods. The "potential replacement cost" is \$100,000 because that was the intended loss, even though there is no "actual replacement cost." However, do not speculate as to how far a scheme might have been carried. Example (6): An offender forges \$50,000, prints another \$150,000 one-sided only and has sufficient paper stocks to print an additional \$5,000,000 in the same denominations already printed. The maximum amount of loss specifically intended is \$200,000. Likewise in credit card theft cases, use "actual replacement cost" only, and do not speculate as to probable intended use.

Special Cases: In check-kiting offenses, do not use the total amount of worthless checks deposited over the life of the scheme. The "potential replacement cost" is the face value of the worthless checks on deposit when the scheme is terminated. If a line of credit in a specified amount is fraudulently obtained, treat as if a fraudulent loan application and use the specified amount.

22. **"Voluntary manslaughter" refers to the unlawful killing of a human being without malice upon a sudden quarrel or heat of passion.**

SALIENT FACTOR SCORE (SFS 98)

Item A. PRIOR CONVICTIONS/ADJUDICATIONS (*ADULT OR JUVENILE*)

None = 3; One = 2; Two or three = 1; Four or more = 0

Item B. PRIOR COMMITMENT(S) OF MORE THAN 30 DAYS (*ADULT/JUVENILE*)

None = 2; One or two=1; Three or more = 0

Item C. AGE AT CURRENT OFFENSE/PRIOR COMMITMENTS.....

| | | |
|------------------|----------------------------------|-----|
| 26 years or more | Three or fewer prior commitments | = 3 |
| | Four prior commitments | = 2 |
| | Five or more commitments | = 1 |
| 22-25 years | Three or fewer prior commitments | = 2 |
| | Four prior commitments | = 1 |
| | Five or more commitments | = 0 |
| 20-21 years | Three or fewer prior commitments | = 1 |
| | Four prior commitments | = 0 |
| 19 years or less | Any number of prior commitments | = 0 |

Item D. RECENT COMMITMENT FREE PERIOD (*THREE YEARS*)

No prior commitment of more than 30 days (adult or juvenile) or released to the community from last such commitment at least 3 years prior to the commencement of the current offense =1; Otherwise = 0

Item E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

Neither on probation, parole, confinement, or escape status at the time of the current offense; nor committed as a probation, parole, confinement, or escape status violator this time =1; Otherwise = 0

Item F. OLDER OFFENDERS

If the offender was 41 years of age or more at the commencement of the current offense (and the total score from Items A - F above is 9 or less) = 1; Otherwise = 0

TOTAL SCORE

SALIENT FACTOR SCORING MANUAL. The following instructions serve as a guide in computing the salient factor score.

ITEM A. PRIOR CONVICTIONS/ADJUDICATIONS (ADULT OR JUVENILE) [[None = 3; One = 2; Two or three = 1; Four or more = 0]]

A.1 In General.

(a) Count all convictions/adjudications (adult or juvenile) for criminal offenses (other than the current offense) that were committed prior to the present period of confinement, except as specifically noted.

(b) Convictions for prior offenses that are not separated from each other by an intervening arrest (e.g., two burglaries followed by an arrest for both offenses) are counted as a single prior conviction. Prior offenses that are separated by an intervening arrest are counted separately (e.g., three convictions for larceny and a conviction for an additional larceny committed after the arrest for the first three larcenies would be counted as two prior convictions, even if all the four offenses were adjudicated together).

(c) Do not count the current federal offense or state/local convictions resulting from the current federal offense (i.e., offenses that are considered in assessing the severity of the current offense). Exception: Where the first and last overt acts of the current offense behavior are separated by an intervening federal conviction (e.g., after conviction for the current federal offense, the offender commits another federal offense while on appeal bond), both offenses are counted in assessing offense severity; the earlier offense is also counted as a prior conviction in the salient factor score.

A.2 Convictions

(a) Felony convictions are counted. Non-felony convictions are counted, except as listed under (b) and (c). Convictions for driving while intoxicated/while under the influence/while impaired, or leaving the scene of an accident involving injury or an attended vehicle are counted. For the purpose of scoring Item A of the salient factor score, use the offense of conviction.

(b) Convictions for the following offenses are counted only if the sentence resulting was a commitment of more than thirty days (as defined in item B) or probation of one year or more (as defined in Item E), or if the record indicates that the offense was classified by the jurisdiction as a felony (regardless of sentence):

- | | |
|--|--|
| 1. Contempt of court; | or promotion of or employment in an |
| 2. Disorderly conduct/disorderly person/breach of the peace/disturbing the peace/uttering loud and abusive language; | unlawful gambling business is not included herein]; |
| 3. Driving without a license/with a revoked or suspended license/with a false license; | 7. Loitering; |
| 4. False information to a police officer; | 8. Non-support; |
| 5. Fish and game violations; | 9. Prostitution; |
| 6. Gambling (e.g., betting on dice, sports, cards) [Note: Operation | 10. Resisting arrest/evade and elude; |
| | 11. Trespassing; |
| | 12. Reckless driving; |
| | 13. Hindering/failure to obey a police officer; |
| | 14. Leaving the scene of an accident (except as listed under (a)). |

(c) Convictions for certain minor offenses are not counted, regardless of sentence. These include:

- | | |
|---|--|
| 1. Hitchhiking; | 4. Traffic violations (except as specifically listed); |
| 2. Local regulatory violations; | 5. Vagrancy/vagabond and rogue; |
| 3. Public intoxication/possession of alcohol by a minor/possession of alcohol in an open container; | 6. Civil contempt. |

A.3 Juvenile Conduct. Count juvenile convictions/adjudications except as follows:

- (a) Do not count any status offense (e.g., runaway, truancy, habitual disobedience) unless the behavior included a criminal offense which would otherwise be counted;
- (b) Do not count any criminal offense committed at age 15 or less, unless it resulted in a commitment of more than 30 days.

A.4 Military Conduct. Count military convictions by general or special court-martial (not summary court-martial or Article 15 disciplinary proceeding) for acts that are generally prohibited by civilian criminal law (e.g., assault, theft). Do not count convictions for strictly military offenses. Note: This does not preclude consideration of serious or repeated military misconduct as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score in relation to this item).

A.5 Diversion.

Conduct resulting in diversion from the judicial process without a finding of guilt (e.g., deferred prosecution, probation without plea, or a District of Columbia juvenile consent decree) is not to be counted in scoring this item. However, an instance of criminal behavior resulting in a judicial determination of guilt or an admission of guilt before a judicial body shall be counted as a conviction even if a conviction is not formally entered.

A.6 Setting Aside of Convictions/Restoration of Civil Rights. Setting aside or removal of juvenile convictions/adjudications is normally for civil purposes (to remove civil penalties and stigma). Such convictions/adjudications are to be counted for purposes of assessing parole prognosis. This also applies to adult convictions/adjudications which may be set aside by various methods (including pardon). However, convictions/adjudications that were set aside or pardoned on grounds of innocence are not to be counted.

A.7 Convictions Reversed or Vacated on Grounds of Constitutional or Procedural Error. Exclude any conviction reversed or vacated for constitutional or procedural grounds, unless the prisoner has been retried and reconvicted. It is the Commission's presumption that a conviction/adjudication is valid, except under the limited circumstances described in the first note below. If a prisoner challenges such conviction, he/she should be advised to petition for a reversal of such conviction in the court in which he/she was originally tried, and then to provide the Commission with evidence of such reversal.

Notes:

(I) Occasionally the presentence report documents facts clearly indicating that a conviction was unconstitutional for deprivation of counsel [this occurs only when the conviction was for a felony, or for a lesser offense for which imprisonment was actually imposed; and the record is clear that the defendant (1) was indigent, and (2) was not provided counsel, and (3) did not waive counsel]. In such case, do not count the conviction. Similarly, do not count a conviction if: (1) the offender has petitioned the appropriate court to overturn a felony conviction that occurred prior to 1964, or a misdemeanor/petty offense that occurred prior to 1973 (and the offender claims he served a jail sentence for the non-felony conviction); (2) the offender asserts he was denied his right to counsel in the prior conviction; and (3) the offender provides evidence (e.g., a letter from the court clerk) that the records of the prior conviction are unavailable.

(II) If a conviction found to be invalid is nonetheless supported by persuasive information that the offender committed the criminal act, this information may be considered as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score).

A.8 Ancient Prior Record. If both of the following conditions are met: (1) the offender's only countable convictions under Item A occurred at least ten years prior to the commencement of the current offense behavior (the date of the last countable conviction under Item A refers to the date of the conviction, itself, not the date of the offense leading to conviction), and (2) there is at least a ten year commitment free period in the community (including time on probation or parole) between the last release from a countable commitment (under Item B) and the commencement of the current offense behavior; then convictions/commitments prior to the above ten year period are not to be counted for purposes

of Items A, B, or C. Note: This provision does not preclude consideration of earlier behavior (e.g., repetition of particularly serious or assaultive conduct) as a negative indicant of parole prognosis (i.e., a possible reason for overriding the salient factor score). Similarly, a substantial crime free period in the community, not amounting to ten years, may, in light of other factors, indicate that the offender belongs in a better risk category than the salient factor score indicates.

A.9 Foreign Convictions. Foreign convictions (for behavior that would be criminal in the United States) are counted.

A.10 Tribal Court Convictions. Tribal court convictions are counted under the same terms and conditions as any other conviction.

A.11 Forfeiture of Collateral. If the only known disposition is forfeiture of collateral, count as a conviction (if a conviction for such offense would otherwise be counted).

A.12 Conditional/Unconditional Discharge (New York State). In N.Y. State, the term "conditional discharge" refers to a conviction with a suspended sentence and unsupervised probation; the term "unconditional discharge" refers to a conviction with a suspended sentence. Thus, such N.Y. state dispositions for countable offenses are counted as convictions.

A.13 Adjudication Withheld (Florida). In Florida, the term "adjudication withheld" refers to a disposition in which a formal conviction is not entered at the time of sentencing, the purpose of which is to allow the defendant to retain his civil rights and not to be classified as a convicted felon. Since the disposition of "adjudication withheld" is characterized by an admission of guilt and/or a finding of guilt before a judicial body, dispositions of "adjudication withheld" are to be counted as convictions for salient factor scoring purposes. However, it is not considered a conviction on which forfeiture of street time can be based.

A.14 Juvenile Consent Decree (District of Columbia). A juvenile consent decree in the District of Columbia (D.C. Code 16-2314(a)) is a diversionary disposition not requiring an admission or finding of guilt. Therefore, it is not to be used in scoring this item.

ITEM B. PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE) [[None = 2; One or two = 1; Three or more = 0]]

B.1 Count all prior commitments of more than thirty days (adult or juvenile) resulting from a conviction/adjudication listed under Item A, except as noted below. Also count commitments of more than thirty days imposed upon revocation of probation or parole where the original probation or parole resulted from a conviction/adjudication counted under Item A.

B.2 Count only commitments that were imposed prior to the commission of the last overt act of the current offense behavior. Commitments imposed after the current offense are not counted for purposes of this item. Concurrent or consecutive sentences (whether imposed at the same time or at different times) that result in a continuous period of confinement count as a single commitment. However, a new court commitment of more than thirty days imposed for an escape/attempted escape or for criminal behavior committed while in confinement/escape status counts as a separate commitment.

B.3 Definitions

(a) This item only includes commitments that were actually imposed. Do not count a suspended sentence as a commitment. Do not count confinement pending trial or sentencing or for study and observation as a commitment unless the sentence is specifically to "time served." If a sentence imposed is subsequently reconsidered and reduced, do not count as a commitment if it is determined that the total time served, including jail time, was 30 days or less. Count a sentence to intermittent confinement (e.g., weekends) totaling more than 30 days.

(b) This item includes confinement in adult or juvenile institutions, community corrections centers, and other residential treatment centers (e.g., halfway houses and community treatment centers). It does not include foster home placement. Count confinement in a community corrections center (CCC) or other residential treatment center only when it is part

of a committed sentence. Do not count confinement in a community corrections center or other residential treatment center when imposed as a condition of probation or parole. Do not count selfcommitment for drug or alcohol treatment.

(c) If a committed sentence of more than thirty days is imposed prior to the current offense but the offender avoids or delays service of the sentence (e.g., by absconding, escaping, bail pending appeal), count as a prior commitment. Note: Where the subject unlawfully avoids service of a prior commitment by escaping or failing to appear for service of sentence, this commitment is also to be considered in Items D and E. Example: An offender is sentenced to a term of three years' confinement, released on appeal bond, and commits the current offense. Count as a previous commitment under Item B, but not under Items D and E. To be considered under Items D and E, the avoidance of sentence must have been unlawful (e.g., escape or failure to report for service of sentence). Example: An offender is sentenced to a term of three years' confinement, escapes, and commits the current offense. Count as a previous commitment under Items B, D, and E.

(d) *District of Columbia Juvenile Commitment to Department of Human Services.* In the District of Columbia, juvenile offenders may be committed to the Department of Human Services for placement ranging from a foster home to a secure juvenile facility. Such a commitment is counted only if it can be established that the juvenile was actually committed for more than 30 days to a juvenile institution or residential treatment center rather than a foster home.

ITEM C. AGE AT COMMENCEMENT OF THE CURRENT OFFENSE/PRIOR COMMITMENTS OF MORE THAN THIRTY DAYS (ADULT OR JUVENILE)

C.1 *Score 3* if the subject was 26 years of age or more at the commencement of the current offense and has three or fewer prior commitments.

C.2 *Score 2* if the subject was 26 years of age at the commencement of the current offense and has four prior commitments.

C.3 *Score 1* if the subject was 26 years of age or more at the commencement of the current offense and has five or more prior commitments.

C.4 *Score 2* if the subject was between 22 and 25 years of age at the commencement of the current offense and has three or fewer prior commitments.

C.5 *Score 1* if the subject was between 22 and 25 years of age at the commencement of the current offense and has four prior commitments.

C.6 *Score 0* if the subject was between 22 and 25 years of age at the commencement of the current offense and has five or more prior commitments.

C.7 *Score 1* if the subject was between 20 and 21 years of age at the commencement of the current offense and has three or fewer prior commitments.

C.8 *Score 0* if the subject was between 20 and 21 years of age at the commencement of the current offense and has four prior commitments.

C.9 *Score 0* if the subject was 19 years or less of age at the commencement of the current offense with any number of prior commitments.

C.10 *Definitions*

(a) Use the age at the commencement of the subject's current federal offense behavior, except as noted under special instructions for federal probation/ parole/confinement/escape status violators.

(b) Prior commitment is defined under Item B.

ITEM D. RECENT COMMITMENT FREE PERIOD (THREE YEARS)

D.1 *Score 1* if the subject has no prior commitments; or if the subject was released to the community from his/her last prior commitment at least three years prior to commencement of his/her current offense behavior.

D.2 *Score 0* if the subject's last release to the community from a prior commitment occurred less than three years prior to the current offense behavior; or if the subject was in confinement/escape status at the time of the current offense.

D.3 *Definitions*

(a) Prior commitment is defined under Item B.

(b) Confinement/escape status is defined under Item E.

(c) Release to the community means release from confinement status (e.g., a person paroled through a CCC is released to the community when released from the CCC, not when placed in the CCC).

ITEM E. PROBATION/PAROLE/CONFINEMENT/ESCAPE STATUS VIOLATOR THIS TIME

E.1 *Score 1* if the subject was not on probation or parole, nor in confinement or escape status at the time of the current offense behavior; and was not committed as a probation, parole, confinement, or escape status violator this time.

E.2 *Score 0* if the subject was on probation or parole or in confinement or escape status at the time of the current offense behavior; or if the subject was committed as a probation, parole, confinement, or escape status violator this time.

E.3 *Definitions*

(a) The term probation/parole refers to a period of federal, state, or local probation or parole supervision. Occasionally, a court disposition such as "summary probation" or "unsupervised probation" will be encountered. If it is clear that this disposition involved no attempt at supervision, it will not be counted for purposes of this item. Note: Unsupervised probation/parole due to deportation is counted in scoring this item.

(b) The term "parole" includes parole, mandatory parole, supervised release, conditional release, or mandatory release supervision (i.e., any form of supervised release).

(c) The term "confinement/escape status" includes institutional custody, work or study release, pass or furlough, community corrections center or other residential treatment center confinement (when such confinement is counted as a commitment under Item B), or escape from any of the above.

ITEM F. OLDER OFFENDERS

F.1 *Score 1* if the offender was 41 years of age or more at the commencement of the current offense and the total score from Items A-F is 9 or less.

F.2 *Score 0* if the offender was less than 41 years of age at the commencement of the current offense or if the total score from Items A-F is 10.

SPECIAL INSTRUCTIONS - PROBATION VIOLATORS THIS TIME

Item A Count the original federal offense as a prior conviction. Do not count the conduct leading to probation revocation as a prior conviction.

Item B Count all prior commitments of more than thirty days which were imposed prior to the behavior resulting in the current probation revocation. If the subject is committed as a probation violator following a "split sentence" for which more than thirty days were served, count the confinement portion of the "split sentence" as a prior commitment. Note: The prisoner is still credited with the time served toward the current commitment.

Item C Use the age at commencement of the probation violation, not the original offense.

Item D Count backwards three years from the commencement of the probation violation.

Item E By definition, no point is credited for this item. Exception: A person placed on unsupervised probation (other than for deportation) would not lose credit for this item.

Item F Use the age at commencement of the probation violation, not the original offense.

SPECIAL INSTRUCTIONS - PAROLE VIOLATORS THIS TIME

Item A The conviction from which paroled counts as a prior conviction.

Item B The commitment from which paroled counts as a prior commitment.

Item C Use the age at commencement of the new criminal behavior/parole violation behavior.

Item D Count backwards three years from the commencement of the new criminal behavior/parole violation behavior.

Item E By definition, no point is credited for this item.

Item F Use the age at commencement of the new criminal/parole violation behavior.

SPECIAL INSTRUCTIONS - CONFINEMENT/ESCAPE STATUS VIOLATORS WITH NEW CRIMINAL BEHAVIOR IN THE COMMUNITY THIS TIME

Item A The conviction being served at the time of the confinement/escape status violation counts as a prior conviction.

Item B The commitment being served at the time of the confinement/escape status violation counts as a prior commitment.

Item C Use the age at commencement of the confinement/escape status violation.

Item D By definition, no point is credited for this item.

Item E By definition, no point is credited for this item.

Item F Use the age at commencement of the confinement/escape status violation.

Notes and Procedures

■ 2.20-01. Purpose of the Guidelines

A. *From the Parole Commission and Reorganization Act, Public Law 94-233, 18 United States Code*

§4206 Parole determination criteria

"(a) If an eligible prisoner has substantially observed the rules of the institution or institutions to which he has been confined, and if the Commission, upon consideration of the nature and circumstances of the offense and the history and characteristics of the prisoner, determines:

"(1) that release would not depreciate the seriousness of his offense or promote disrespect for the law;" and (2) that release would not jeopardize the public welfare;

Subject to the provisions of subsections (b) and (c) of this section, and pursuant to guidelines promulgated by the Commission pursuant to section 4203(a)(1), such prisoner shall be released.

"(b) The Commission shall furnish the eligible prisoner with a written notice of its determination not later than twenty-one days, excluding holidays, after the date of the parole determination proceeding. If parole is denied such notice shall state with particularity the reasons for such denial."

"(c) The Commission may grant or deny release on parole notwithstanding the guidelines referred to in subsection (a) of this section if it determines there is good cause for so doing; provided, that the prisoner is furnished written notice stating with particularity the reasons for its determination, including a summary of the information relied upon."

B. *From Joint Explanatory Statement of the Committee of Conference, The Parole Commission and Reorganization Act - Section by Section Analysis*

§4206 Parole determination criteria

"This section provides the standards and criteria to be used by the Parole Commission in making parole release determinations for federal prisoners who are eligible for parole.

It is the intent of the Conferees that the Parole Commission make certain judgments pursuant to this section, and that the substance of those judgments is committed to the discretion of the Commission.

First, it is the intent of the Conferees that the Parole Commission reach a judgment on the institutional behavior of each prospective parolee. It is the view of the Conferees that understanding by the prisoner of the importance of his institutional behavior is crucial to the maintenance of safe and orderly prisons.

Second, it is the intent of the Conferees that the Parole Commission review and consider both the nature and circumstances of the offense and the history and characteristics of the prisoner. It is the view of the Conferees that these two items are most significant in making equitable release determinations and are a viable basis, when considered together, for making other judgments required by this section.

It is the intent of the Conferees that the Parole Commission, in making each parole determination, shall recognize and make a determination as to the relative severity of the prospective parolee's offense and that in so doing shall be cognizant of the public perception of and respect for the law. It is the view of the Conferees that the U. S. Parole Commission is joined in purpose by the Courts, the Congress and the other Executive agencies in a continuing effort to instill respect for the law. The Parole Commission efforts in this regard are fundamental and shall be manifested by parole determinations which result in the release on parole of only those who meet the criteria of this Act.

Determinations of just punishment are part of the parole process, and these determinations cannot be easily made because they require an even-handed sense of justice. There is no body of competent empirical knowledge upon which parole decision-makers can rely, yet it is important for the parole process to achieve an aura of fairness by basing determinations of just punishment on comparable periods of incarceration for similar offenses committed under similar circumstances. The parole decision-makers must weigh the concepts of general and special deterrence, retribution and punishment, all of which are matters of judgment, and come up with determinations of what is meant by "would not depreciate the seriousness of his offense or promote disrespect for the law" that, to the extent possible, are not inconsistent with the findings in other parole decisions.

The phrase "release would not depreciate the seriousness of his offense or promote disrespect for the law" involves two separate criterion and there may be situations in which one criterion is met but the other remains unsatisfied. For example, if a public official was convicted of fraud which involved a violation of the public trust and was sentenced to three years imprisonment, his release on parole after one year might satisfy the "depreciate the seriousness" criterion but the Commission could justify denying release on the grounds that such release "would promote disrespect for the law."

The use of the phrase "release would not jeopardize the public welfare," is intended by the Conferees to recognize the incapacitative aspect of the use of imprisonment which has the effect of denying the opportunity for future criminality, at least for a time. It is the view of the Conferees that the Parole Commission must make judgments as to the probability that any offender would commit a new offense based upon considerations which include comparisons of the offender with other offenders who have similar backgrounds. The use of predictive devices is at best an inexact science, and caution should be utilized. Such items as prior criminal records, employment history and stability of living patterns have demonstrated their usefulness in making determinations of probability over a substantial period of time. These are not written into the statute, however, as it is the intent

of the Conferees to encourage the newly created Parole Commission to continue to refine both the criteria which are used and the means for obtaining the information used therein.

Further, this section provides that Parole Commission guidelines, shall provide a fundamental gauge by which parole determinations are made.

It is the intent of the Conferees that the guidelines serve as a national parole policy which seeks to achieve both equity between individual cases and a uniform measure of justice. The Parole Commission shall actively seek the counsel and comment of the corrections and criminal justice communications (sic) prior to promulgation of guidelines and shall be cognizant of past criticism of parole decision making.

Further, this section provides that when parole is denied, that the prisoner be given a written notice which states with particularity the reasons for such denial.

The phrase "shall be released" includes release at expiration as if on parole or without parole supervision as provided in section 4164 of Title 18, United States Code. The term "holidays" as used in this section refers to congressionally declared Federal holidays. This section also permits the Commission to grant or deny parole notwithstanding the guidelines only when the Commission has determined that there is good cause to do so, and then requires that the prisoner be provided "with particularity the reasons for the Commission's determination, including a summary of the information relied upon." For example, if a prisoner who has served the time required to be released on parole according to the guidelines is denied parole and this denial results in delaying his release beyond the time period recommended by the guidelines, he shall receive a specific explanation of the factors which caused the Commission to reach a determination outside the guidelines.

For the purposes of this section "good cause" means substantial reason and includes only those grounds put forward by the Commission in good faith and which are not arbitrary, irrational, unreasonable, irrelevant or capricious.

The definition of what constitutes good cause to go outside the established guidelines can not be a precise one, because it must be broad enough to cover many circumstances.

For example, in making a parole release determination above the guidelines, the Commission would consider factors which include whether or not the prisoner was involved in an offense with an unusual degree of sophistication or planning, or has a lengthy prior record, or was part of a large scale conspiracy or continuing criminal enterprise.

On the other hand, the Commission would consider factors such as a prisoner's adverse family or health situation in deciding to make a parole release determination below guidelines. By focusing on the justifications for exceptions to the guidelines, subsequent administrative review by the National Appeals Board will be facilitated and there will be more uniformity and greater precision in the grant or denial of parole.

If the decisions to go above or below parole guidelines are frequent, the Commission should reevaluate its guidelines.

■ 2.20-02. *Completion of the Guidelines.*

The applicable guideline evaluation worksheet shall be completed at all initial, revocation, and rescission hearings. It will be referred to in the summary at all subsequent hearings. In each case, the examiner shall review the guidelines and, prior to making a recommendation, shall consider whether there is "good cause" for a decision outside the guidelines, or whether a decision within the guidelines is appropriate.

■ 2.20-03. *Calculating Time in Custody.*

Time in custody means only time in actual physical custody. Time on probation does not count as time in custody. Nor does time on escape status count. Moreover, a sentence for contempt of court interrupts the running of the federal criminal sentence. Thus, any time spent as a result of a sentence of civil contempt is not counted in calculating time in custody.

A. Original Parole Consideration.

- (1) Calculate the number of months in actual physical custody on the present federal sentence(s). Include jail time credit.
- (2) Credit is given towards the guidelines for any time spent in confinement on any offense considered in assessing offense severity. For example, if a defendant is prosecuted by both federal and state governments for the same behavior, such as a federal offense of bank robbery and a state offense of assault arising out of that robbery, the behavior will be considered in assessing offense severity and the defendant will be credited towards the guidelines for the time in custody on the state charge.
- (3) If the subject was received directly from state custody, where he was serving time on state charges only, count only the time since the federal sentence began. If a subject has been in state custody for a substantial period, this may be considered in determining whether a decision below the guidelines is warranted. However, it should not be counted as time in custody for purposes of guideline calculation unless the behavior is taken into account in assessing offense severity (e.g., a prisoner serving a federal sentence for a bank robbery and a state sentence for an assault committed during that robbery).

B. Non-Parolable Federal Sentences.

Credit is given towards the guidelines for any time to be served on a non-parolable federal sentence if the behavior to which the non-parolable sentence refers is considered in assessing offense severity. The Notice of Action would therefore state that the prisoner is continued to a date that will require a total service of [] months in combination with a consecutive sentence requiring [] months in custody. If the consecutive sentence is subsequently vacated or modified by the sentencing court, the Commission will reopen the case to reconstruct its original plan by setting a new release date.

C. Probation Revocation Cases.

Credit any time spent in actual physical custody (federal or state) for any offense considered in assessing offense severity. If a prisoner is received as a probation violator from a split sentence, also credit the months spent in federal custody prior to being placed on probation.

D. Parole Violators (Reparole Consideration).

In rep parole guideline cases, count as time in custody any time spent in actual physical custody (whether state or federal) as a result of the actions leading to parole violation. [Example: A parolee is convicted of a state charge of forgery and spends 10 months in state custody; he is in federal custody an additional 2 months at the time of his revocation hearing. Time in custody for rep parole guideline purposes is $10 + 2 = 12$ months.]

■ 2.20-04. Offense Severity Rating.

In applying the guidelines, the offense severity rating shall reflect the overall circumstances of the present offense behavior. Select the offense rating appropriate to the actual offense behavior that occurred. The severity rating must be explained on the Notice of Action Worksheet (in the space provided) by a brief summary of the specific facts that justified the rating. 28 C.F.R. 2.19(c) provides: "The Commission may take into account any substantial information available to it in establishing the prisoner's offense severity rating, salient factor score, and any aggravating or mitigating circumstances, provided the prisoner is apprised of the information and afforded an opportunity to respond. If the prisoner disputes the accuracy of the information presented, the Commission shall resolve such dispute by the preponderance of the evidence standard; that is, the Commission shall rely upon such information only to the extent that it represents the explanation of the facts that best accords with reason and probability."

Information in the file describing offense circumstances more severe than reflected by the offense of conviction (for example, information contained in a count of an indictment that was dismissed as a result of a plea agreement) may be relied upon to select an appropriately higher severity rating only if such information meets the standard indicated in 28 C.F.R. 2.19(c). The normal indicants of reliability are (a) the report is specific as to the behavior alleged to have taken place; (b) the allegation is corroborated by established facts; and (c) the source of the allegation appears credible. The prisoner is to be informed of the allegation at the hearing and given an opportunity to respond. An allegation that is vague, unsupported, or comes from an unreliable source should not be considered. Cases requiring further information or verification may be referred to the Commission's Office.

The Commission's consideration of aggravating offense circumstances in applying its guidelines has been approved in the following cases: *Zannino v. Arnold*, 531 F.2d 687 (3d Cir. 1976) [allegation that offense was a "large-scale conspiracy" committed in an "unusually sophisticated" manner]; *Brown v. Lundgren*, 528 F.2d 1050 (5th Cir. 1976) [circumstances not given in the opinion but involved pattern of on-going criminal behavior and multiple separate offenses]; *Grattan v. Sigler*, 525 F.2d 329 (9th Cir. 1975) [allegation that the prisoner was a "ringleader"]; *Foddrell v. Sigler*, 418 F.Supp. 324 (M.D. Pa. 1976) ["sophisticated operation involving large amounts of heroin"]; and *Biancone v. Norton*, 421 F.Supp. 1044 (D. Conn. 1976) [multiple separate offenses]; and in the cases cited below. Similarly, Commission's consideration of unadjudicated offenses has been approved in the following cases: *Billiteri v. United States Board of Parole*, 541 F.2d 938 (2d Cir. 1976) [offense rated as extortion based on information in the pre-sentence report; the Court specifically rejected the contention that the Government's acceptance of a plea restricted to the conspiracy charge was a bar to the Commission from considering the actual offense behavior]; *Bistram v. U.S. Parole Board*, 535 F.2d 329 (5th Cir. 1976) [Commission relied upon dismissed count of kidnapping notwithstanding bargained plea to bank robbery only]; *Lupo v. Norton*, 371 F.Supp. 156 (D. Conn. 1974) [prisoner convicted of conspiracy to transport stolen goods was alleged to have committed robbery to obtain same]; and *Manos v. U.S. Board of Parole*, 399 F.Supp. 1103 (M.D. Pa. 1975). [Prisoner pleaded guilty to two counts of filing false tax reports involving less than \$20,000 but Commission considered entire 22-count indictment charging a total defrauding of \$150,000]. These decisions have accorded to the Parole Commission the same scope of discretion as that exercised by the sentencing courts. As stated in *Billiteri*, supra, at 444:

"If therefore, the sentencing judge is not limited to a consideration of only that criminal conduct of the defendant that is related to the offense for which he was convicted, the Parole Board, which is concerned with all facets of a prisoner's character, make-up and behavior, is a fortiori, certainly entitled to be fully advised of the contents of the presentence report and to use it in giving an offense severity rating and for such other purposes as it finds necessary and proper. . ."

■ 2.20-05. *Decisions Outside the Guidelines*

A. *In General.* 18 U.S.C. 4206 provides that the Commission may render a decision outside the guidelines for good cause provided the prisoner is furnished a specific explanation for such action. It is in the Commission's discretion to render a decision outside the guidelines (whether above or below) provided the circumstances warrant and such decision is adequately explained. The reasons given in the Notice of Action for a decision above or below the guidelines must explain what specific facts were relied upon to distinguish that case from the "typical" cases for which the guidelines are set. If a decision outside the guidelines follows the recommendation of the sentencing judge, the prosecutor or another interested party, it is not sufficient to cite that recommendation as the reason for departure from the guidelines. Instead, the Notice of Action must state the reasoning and factual basis for the recommendation which was found to justify a decision outside the guidelines.

The following are examples of situations in which a decision outside the guidelines appropriately may be considered. This does not mean that these are the only situations in which a decision outside the guidelines may be considered. Nor does it mean that a decision outside the guidelines is mandated for every such case.

Each of the following examples sets forth the Commission's reason for its decision and the specific facts primarily relied upon in support of that reason. Avoid sweeping or ambiguous phrases as well as irrelevant facts. Be specific enough with the facts described so that a person not familiar with the case will know what you are talking about.

B. *Decisions Above the Guidelines*

[Examples 1-3: Aggravating Offense Factors]

1. *Aggravated nature of the offense behavior:*

. . .because of the aggravated nature of your offense behavior: victims were repeatedly beaten and threatened during the offense.

. . .because of the aggravated nature of your offense behavior: you were responsible for an offense of unusual magnitude - investors were defrauded of over twenty-five million dollars during a period of five years.

2. *Extremely vulnerable victim(s) [e.g., extremely young or aged, or mentally or physically handicapped].*

...because of the aggravated nature of your offense behavior which involved an extremely vulnerable victim: you committed the sexual assault of a 10 year old girl.

...because of the aggravated nature of your offense behavior: you distributed a controlled substance near an elementary school.

3. *Unusually extensive, organized criminal enterprise:*

...because of the aggravated nature of your offense behavior: you were a ringleader in an unusually extensive, sophisticated criminal enterprise over an eighteen month period which engaged in the fencing of furs and jewelry stolen in numerous burglaries, and involved an extensive network of contacts and sophisticated methods of concealing the origin of the stolen goods.

...because of the aggravated nature of your offense behavior: you played a leadership role in an unusually extensive, organized criminal enterprise - a cocaine importation and distribution operation which involved monthly multi-kilo shipments over a two year period and a multi-state distribution network with over twelve co-conspirators acting under your direction.

[[This provision is particularly applicable to offenders with a leadership role in an organized criminal conspiracy involving more than ten persons]].

[Examples 4-7: Parole Prognosis]

4. *Poorer Parole Risk:*

...because you are a poorer parole risk than indicated by your salient factor score in that you have repeatedly failed to adjust to previous periods of parole supervision.

...because you are a poorer parole risk than indicated by your salient factor score: you committed a state firearms act offense while on bond in your present criminal case.

...because you are a poorer parole risk than indicated by your salient factor score: [you have had an on-going involvement in loan-sharking and extortion activities for the past 10 years] [you have admitted to on-going involvements in drug trafficking for the past 10 years].

5. *More Serious Parole Risk (History of repetitive assaultive behavior):*

...because you are a more serious parole risk than indicated by your salient factor score due to your history of repetitive assaultive behavior: [give specifics, e.g., your prior record shows a conviction for aggravated assault and a conviction for armed robbery. Your present offense behavior involved a bank robbery in which an overt threat of violence was made].

6. *More Serious Parole Risk (History of repetitive sophisticated criminal behavior):*

...because you are a more serious parole risk than indicated by your salient factor score due to your history of repetitive sophisticated criminal behavior: three out of five prior convictions involve sophisticated fraud similar to your current offense.

7. *More Serious Parole Risk (Unusually extensive and serious prior record):*

...because you are a more serious parole risk than indicated by your salient factor score due to your extensive and serious prior record [e.g., you have eight previous convictions for serious offenses (give specifics)].

[Example 8: Institutional Misconduct]

8. *Specified instance of institutional misconduct:*

. . .because you failed to maintain a good institutional record. You were found to have [been in an unauthorized area without permission] [possessed narcotic paraphernalia] by an institutional disciplinary committee on September 9, 1976. [NOTE: Consult Rescission Guidelines for appropriate penalty].

[Examples 9-10: Other]

9. *Release would promote disrespect for the law:*

. . .because your release within the guidelines would promote disrespect for the law. In committing your offense, you gained a significant advantage from guarantees of financial security created by federal deposit insurance and government regulation of the S&L industry, and your offense has thereby resulted not only in dollar amount losses, but also in damage to public confidence that is not reflected in your offense severity rating.

10. *Refusal to Make Restitution/Return Property/Pay Fine*

. . .because you have refused to [make restitution] [return the property stolen] [pay an outstanding fine] although you have the ability to do so. [Note: where a decision above the guidelines is rendered, the Notice of Action may advise the prisoner that should there be a change in circumstances (e.g., restitution or a full accounting of his finances made), the prisoner may request reopening of the case under 28 C.F.R. 2.28(a).]

C. *Decisions Below the Guidelines*

[Examples 1-6: Mitigating Offense Factors]

1. *Mitigating Offense Factors:*

. . .The prisoner's offense was less serious than the rated offense would normally be: [give specifics] [e.g., the amount of drugs sold was unusually small and no financial gain was involved] [the prisoner was only peripherally involved in the offense].

. . .The prisoner did not knowingly contemplate that his conduct would result in the harm that it did and the harm could not have been reasonably foreseen [give specifics].

2. *Diminished Mental Capacity:*

. . .The prisoner had diminished mental capacity to contemplate the seriousness of the offense [because of extremely low intelligence or extreme youthfulness].

3. *Duress:*

. . .There is confirmed evidence that duress was overtly exercised to force the prisoner to commit the offense.

4. *Attempted Corrective Measure:*

. . .There is confirmed evidence that the prisoner attempted to withdraw prior to completion of the offense or attempted to make restitution prior to discovery of the offense.

5. *Genuine Claim of Right [Property Offenses]:*

. . .because the prisoner believed he had genuine claim of right to the property involved even though the method used to obtain the property was unlawful.

6. *Extreme Provocation [Assaultive Offenses]:*

. . .because there was extraordinarily severe provocation by the victim or provocation combined with a diminished mental state (occurring through no fault of the offender).

[Example 7: Parole Prognosis]

7. *Better Parole Risk:*

. . .The prisoner is a better parole risk than his salient factor score indicates because [give specifics] [e.g., his low salient factor score results exclusively from trivial offenses; he has a substantial crime-free period since his last offense; he has extremely strong community resources available].

[Examples 8-11: Other]

8. *Substantial Cooperation:*

. . .The prisoner has provided substantial cooperation to the government [e.g., in the prosecution of other cases; in averting a riot] which has been otherwise unrewarded.

9. *Substantial Medical Problems:*

. . .because of poor medical prognosis due to a deteriorating heart condition, a degenerative infirmity caused by virus/heredity or advanced age, or the presence of a catastrophic medical condition.

[Note: The mere existence of advanced age or a severe medical affliction shall not be considered to be sufficient for a decision below the guidelines or for a more lenient decision. The Commission shall also consider the seriousness of the offense and the long term medical prognosis, as well as the probability of future criminal conduct based upon an assessment of the prisoner's record. In general, a habitual offender/organized crime offender shall require the presence of further extraordinary factors to warrant a decision below the guidelines.]

10. *Substantial Period in Custody on other Sentence(s) or Additional Committed Sentences:*

. . .The prisoner has served a substantial continuous period of time [... months] in federal or state custody as a result of other charges.

. . .The prisoner faces a substantial period of time on additional committed sentences estimated as at least [. . . months].

[Note: Deportation shall not be considered a sufficient reason for a decision below the guidelines.]

[Example 11: Superior Program Achievement]

11. *Superior Program Achievement:*

. . .The prisoner has a record of superior program achievement [give specifics]. *NOTE:* Decisions below the guidelines for superior program achievement are governed by 28 C.F.R. 2.60.

■ 2.20-06. *Clinical Judgment Regarding Parole Risk.*

One of the more difficult tasks facing the parole decision-maker is the consideration as to when a decision above or below the applicable guideline range is warranted based upon a clinical judgment to override the salient factor score. An excellent discussion of the application and limitations of clinical judgment, and particularly of its relation to the prediction of violence, is found in Monahan, "The Clinical Prediction of Violent Behavior" (in U. S. Parole Commission Selected Reprints - Volume Four).

Clinical override judgments are of two distinct types:

(A) *More serious parole risk.* This judgment concerns whether a parole applicant poses a significantly higher likelihood of committing violent or other extremely serious offenses after release than is taken into account by the guidelines [which consider the current offense and salient factor score]. Offenders with a repetitive history of assaultive conduct, a repetitive history of large scale sophisticated offenses, or an extensive history of serious offenses may be considered for a decision above the guidelines under this provision. [See 2.20-05(B)(5-7).]

(B) *Better/poorer parole risk.* This judgment concerns whether a parole applicant poses a significantly lower or higher likelihood of any new criminal conduct after release than indicated by the salient factor score. [See 2.20-05(B)(4); (C)(7).] In such case, a parole applicant may be given a decision below or above the guidelines (as if the parole applicant had a higher or lower salient factor score).

Note that a decision below the lower limit of the "very good" risk category cannot be authorized on the basis of "risk". The lower limit of the "very good" risk guideline range is set upon the presumption that an individual with a salient factor score of ten will not recidivate.

Note that a decision above the upper limit of the "poor risk" category may be warranted on the grounds of "poorer risk" in certain extreme cases [e.g., where the prisoner has a substantially worse prior record than the typical case with a score of zero. But also note that the majority of prisoners with a salient factor score of zero have 8-12 prior convictions and 6-9 prior commitments. Prior negative parole histories are also frequent. A decision above the upper limit of the "poor risk category" on the basis of "poorer risk" should be considered only where such case can logically be distinguished from the typical case with a score of zero].

■ 2.20-07. *Principle of Parsimony.*

It is the intent of the Commission to use the least restrictive sanction required to fulfill the purposes of 18 U.S.C. 4206 and 28 C.F.R. 2.20. It is expected that when a decision within the guidelines is recommended, a case generally will be placed in the lower half of the guideline range unless the offense behavior or prior record/salient factor score is among the more serious contained within the category [For example, other factors being equal, a property offense near the lower limit of the Category Four severity (\$40,000) generally would be placed towards the bottom of the range; a property offense near the upper limit (\$200,000) generally would be placed higher in the range; less culpable codefendants would generally be placed towards the bottom of the range; codefendants with prime responsibility would generally be placed higher in the range]. If the offense behavior involved (a) the possession of a weapon during the commission of another offense (e.g., robbery with a weapon, or possession of a weapon during a drug offense); or (b) the offense behavior involved multiple separate Category Five or higher offenses not sufficient to raise the severity level (e.g., two robberies); or (c) the offender is a parole violator with new criminal conduct, the case will normally be placed in the upper half of the applicable guideline range. It is to be stressed that this paragraph is intended to provide a methodology to promote analysis, not a mechanical rule.

■ 2.20-08. *Guideline Application - Complex Cases.*

The following is designed to assist in guideline interpretation of certain complex cases.

(1) *Cases Reopened for a New Sentence.*

(a) If the new criminal conduct was before the most recent commitment (e.g., if it is later discovered that the prisoner had committed three additional robberies), conduct a new initial hearing using the total offense behavior (multiple offense rule), and set a new presumptive date [*de novo*].

(b) If the new criminal conduct was committed during the most recent commitment and the prisoner has been given a presumptive or effective parole date, apply the rescission guidelines and add the time to the previous presumptive or effective parole date. That is, treat exactly as a rescission case for guideline purposes (but otherwise treat as a new initial hearing; no rescission findings are required).

(c) If the new criminal conduct was committed during the most recent commitment and the prisoner had previously been continued to expiration, use initial hearing procedures, but calculate the rescission guidelines and stack the guideline range(s) to the original guideline range.

Example: A 30 year old first offender is continued to expiration on a 15 month sentence for fraud of \$20,000. He escapes from a non-secure facility and three months later is arrested and convicted of a \$5,000 fraud committed while in escape status and given a consecutive 5 year sentence. The applicable guidelines on the total sentence are the original guidelines [Category Four severity (original offense); SFS=10; GL range 12-18 months] + [8-16 months for escape] + [Category Three severity (new offense); recalculated SFS=6, GL range 12-16 months] = [combined GL range of 32-50 months].

2. Initial Hearing (No Previous Hearing) Where There Is New Criminal Conduct Since Commitment.

Use initial hearing procedure; consider the case using the guideline procedure specified under 1(c). That is, first calculate the guideline range without considering the escape or new criminal behavior; then stack the ranges for escape and/or the new criminal behavior as in a rescission case (recalculate the salient factor score if the new criminal behavior was committed in the community).

Example: A 30 year old first offender robs a bank. Before having an initial hearing, the offender escapes and five weeks later robs another bank. The applicable guideline range is calculated as follows: [Category Five (original offense); SFS=10; GL range = 24-36 months] + [8-16 months for escape] + [Category Five (new offense); SFS (recalculated) = 6; GL range = 36-48 months] = [combined GL range of 68-100 months].

3. Initial Hearing With a Failure to Appear on the Federal Offense [or a Failure to Appear on a Felony During Probation or Parole Status].

Where the underlying offense behavior can be established (preponderance of the evidence), calculate the guidelines for the underlying offense and add the applicable failure to appear guidelines.

Example: A 30 year old first offender robs a bank, and fails to appear for trial on this charge for 7 days or more. Grade as [Category Five (original offense); SFS=10; GL range = 24-36 months] + [6-12 months for failure to appear] = [combined GL range of 30-48 months].

Note: If there is a new offense while in failure to appear status, treat as a multiple separate offense plus failure to appear [example: robbery + failure to appear + 2 robberies (while in failure to appear status) is treated as 3 robberies + failure to appear].

4. Other.

Example: A prisoner steals a car while on furlough from a CCC, is not discovered, and is later released on parole. After release on parole, the releasee steals another car. Grade under the multiple separate offense procedure and recalculate the salient factor score. The rescission and reparole guidelines are not stacked to each other.

■ *2.20-09. Unwarranted Codefendant Disparity.*

"Unwarranted codefendant disparity" refers to different parole decisions for similarly situated offenders where no legitimate reason for the difference in decisions exists. It is to be remembered that different decisions for codefendants are not necessarily inappropriate.

Example 1: Two codefendants appear equally culpable in the current offense. However, codefendant A is a first offender (SFS=9); codefendant B has a long prior record (SFS=3). Different decisions based on risk are appropriate and do not constitute unwarranted disparity.

Example 2: Two codefendants have similar salient factor scores but one is significantly more culpable than the other in regards to the current offense. A more severe decision for the more culpable defendant is appropriate and does not constitute unwarranted disparity.

Example 3: Two codefendants appear equally culpable in the current offense and have similar salient factor scores; codefendant A shows superior program achievement while in prison; codefendant B has numerous disciplinary infractions. Different decisions based upon institutional behavior are appropriate and do not constitute unwarranted disparity.

Example 4: Three codefendants are similar in all respects except one develops a serious medical condition. Earlier release for a valid medical reason is appropriate and does not create unwarranted disparity.

Example 5: Codefendant A pleads guilty; codefendant B who is more culpable avoids prosecution by fleeing the jurisdiction; codefendant C who is most culpable is acquitted after a trial. The fact that more culpable codefendants may have avoided prosecution or conviction does not make appropriate unwarranted leniency on the part of the Commission regarding codefendant A. The decision for codefendant A is to be made pursuant to applicable Commission standards.

Example 6: Codefendant A receives a 5 year sentence, codefendant B receives a 2 year sentence, and codefendant C is placed on probation. The reason for the differences in sentences is not clear. The guideline range for all cases is 24-36 months. That one or more codefendants may have received unwarranted leniency by court action (resulting in a mandatory release date below the applicable guideline range or no imprisonment at all) does not warrant compounding such action by unwarranted leniency on the part of the Commission regarding codefendant A. The decision for codefendant A is to be made pursuant to applicable Commission standards.

Example 7: Three codefendants appear equally culpable, have similar salient factor scores, have identical sentences, and appear to have no other relevant differences. Significantly different decisions by the Commission in such cases constitute unwarranted disparity and are to be avoided. Note: if it appears that the Commission has erroneously granted unwarranted leniency to one codefendant, it is not appropriate to compound such error by providing unwarranted leniency to other codefendant cases.

■ 2.20-10. *Military Prisoners.*

In applying the guidelines to military prisoners, examiners shall thoroughly examine the details of the offense to determine if case-specific factors pertaining to special military circumstances surrounding the crime justify placing the offender at the top or above the guidelines, such as drug distribution on a ship or near weaponry which endangers the lives of others or the mission, or any other offense which diminishes discipline and morale of the armed services.

Example 1: The offense created a far greater threat to public safety and to the readiness of our military forces than indicated by a simple accounting of the weight of the drugs involved because it was committed in an inherently hazardous environment where mutual trust, physical fitness and mental alertness are prerequisites for success or survival; for example, this offender was distributing "crack" cocaine to aviation jet mechanics, technicians and other members of his anti-submarine squadron thus jeopardizing safe aircraft operations.

Example 2: The offense involved the theft of property from members of the offender's own unit which weakens the bonds of mutual trust and support which are essential to unit integrity and distract unit members from their primary goal of combat readiness.

Example 3: The victim of the crime was (the offender's superior in the chain of command) (a member of the offender's unit) (a family member of a member of the offender's unit). Crimes against members of the offender's immediate military family have significant adverse impact on unit training and operational readiness irrespective of the actual scope of the crime.